

# **EXHIBIT 1**

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

JAMES GROSS, individually and on behalf of  
all others similarly situated,

*Plaintiff,*

v.

SYMANTEC CORPORATION, a Delaware  
corporation, and PC TOOLS, LTD., an Irish  
limited liability company,

*Defendants.*

Case No. 3:12-cv-00154-CRB

**STIPULATION OF CLASS ACTION  
SETTLEMENT**

Judge: Honorable Charles R. Breyer  
Action Filed: January 10, 2012

1 This Stipulation of Class Action Settlement (the “Agreement”) is entered by and among  
 2 Plaintiff James Gross (“Gross” or “Plaintiff”) for himself individually and on behalf of the  
 3 Settlement Class, and Defendants Symantec Corporation (“Symantec”) and PC Tools, Ltd. (“PC  
 4 Tools”) (collectively, “Defendants”) (Plaintiff and Defendants are collectively referred to herein as  
 5 the “Parties”).<sup>1</sup> This Agreement is intended by the Parties to fully, finally and forever resolve,  
 6 discharge and settle the Settled Claims upon and subject to the terms and conditions hereof, and  
 7 subject to the approval of the Court.

8 **I. RECITALS**

9 WHEREAS, prior to Plaintiff filing the instant lawsuit, the Parties held an initial meeting  
 10 (through counsel) during which Class Counsel presented their expert’s conclusions about the  
 11 Software Products at issue in the Action and their underlying methodologies, and the Parties  
 12 otherwise discussed their respective views of the case. Based on those discussions, they agreed that  
 13 there was at least some potential for an early resolution and therefore, proceeded with an all-day  
 14 mediation before Judge Ronald M. Sabraw (ret.) of JAMS on January 3, 2012;

15 WHEREAS, the Parties did not reach a settlement at the January 3rd mediation and, as a  
 16 result, on January 10, 2012, Plaintiff filed an action in the United States District Court for the  
 17 Northern District of California, captioned *Gross v. Symantec Corp.*, Case No. 3:12-cv-00154-CRB  
 18 (the “Action”), alleging claims for damages, injunctive, and declaratory relief against Symantec  
 19 Corp. arising out of the design, marketing, and sale of the Software Products;

20 WHEREAS, on April 2, 2012, Plaintiff filed a First Amended Complaint in the Action,  
 21 adding Symantec’s wholly-owned subsidiary, PC Tools, Ltd., as a party-defendant;

22 WHEREAS, on April 17, 2012, Symantec moved to dismiss Plaintiff’s First Amended  
 23 Complaint;

24 WHEREAS, on July 31, 2012, the Court granted Symantec’s motion to dismiss without  
 25 prejudice and directed Plaintiff to file a further amended pleading;

26  
 27 <sup>1</sup> Except as otherwise specified, defined terms shall have the meanings set forth in Section II  
 28 of this Agreement.

1 WHEREAS, on August 14, 2012, Plaintiff filed a Second Amended Complaint in the  
2 Action;

3 WHEREAS, on August 31, 2012, Symantec moved to dismiss Plaintiff's Second Amended  
4 Complaint, which has been fully briefed but not yet ruled upon by the Court;

5 WHEREAS, during the pendency of Symantec's motions to dismiss, Plaintiff served and  
6 Symantec responded to his first set of written discovery requests;

7 WHEREAS, the Parties met and conferred by telephone and in writing regarding  
8 Symantec's written discovery responses;

9 WHEREAS, on November 12, 2012 the Parties proceeded with a second all-day mediation  
10 before Mr. John B. Bates, Jr. of JAMS. With the assistance of Mr. Bates, the Parties reached a  
11 class action settlement in principle that would resolve each of the claims against Defendants in the  
12 Action related to the alleged fraudulent design and marketing of the Software Products;

13 WHEREAS, Plaintiff and Class Counsel have conducted a comprehensive examination of  
14 the law and facts relating to the matters at issue in the Action regarding Plaintiff's claims and  
15 Defendants' potential defenses, including through formal and informal discovery, and exchanges  
16 of information both prior to and throughout the pendency of the Action;

17 WHEREAS, the Parties engaged in extensive arms-length settlement negotiations, which  
18 included two formal mediation sessions as well as the exchange of information through discovery;

19 WHEREAS, based on an analysis of the facts and the law applicable to Plaintiff's claims in  
20 the Action, and taking into account the burdens and expense of such litigation, including the risks  
21 and uncertainties associated with protracted trials and appeals, as well as the fair, cost-effective  
22 and assured method of resolving the claims of the Settlement Class, Plaintiff and Class Counsel  
23 have concluded that this Settlement provides substantial benefits to the Settlement Class and the  
24 public as a whole, and is fair, reasonable, adequate, and in the best interest of Plaintiff and the  
25 Settlement Class;

26 WHEREAS, Defendants do not admit any liability or wrongdoing, but have similarly  
27 concluded that this Agreement is desirable in order to avoid the time, risk and expense of  
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defending protracted litigation, and to resolve finally and completely the pending and potential claims of Plaintiff and the Settlement Class; and

WHEREAS, the Parties agree that all Persons shall have an individual right to exclude themselves from the Settlement Class, such that participation in the Settlement Benefits provided by this Agreement shall be voluntary;

NOW, THEREFORE, the Parties stipulate and agree that any and all Released Claims against Symantec Corp. and PC Tools, Ltd., and all other Released Parties, shall be finally settled and resolved on the terms and conditions set forth in this Agreement, subject to Court approval, as a fair, reasonable and adequate settlement.

## **II. DEFINITIONS**

As used herein, in addition to any definitions set forth elsewhere in this Agreement, the following terms shall have the meanings set forth below:

“**Action**” means the case captioned *Gross v. Symantec Corp., et al.*, Case No. 3:12-cv-00154-CRB (N.D. Cal.), and any amendments thereto.

“**Agreement**” means this Stipulation of Class Action Settlement (including all exhibits hereto).

“**Approved Claim**” means a Claim Form submitted by a Settlement Class Member that (a) is timely and submitted in accordance with the directions on the Claim Form and the terms of this Agreement, (b) is physically signed or electronically verified by the Settlement Class Member, and (c) satisfies the conditions of eligibility for a Settlement Payment as set forth in Section VI.C.1.

“**Claimant**” means a Settlement Class Member that submits a Claim Form for a Settlement Benefit.

“**Claim Form**” means the form attached hereto as Exhibit B, as approved by the Court. The Claim Form must be completed, and physically signed or verified electronically, by Settlement Class Members who wish to file a claim for a Settlement Benefit, and shall be available for download from the Settlement Website in electronic format and from the Settlement Administrator in hardcopy form. The Claim Form will require the Settlement Class Member to provide the following information: (i) full name, current address, telephone number (optional), and e-mail address, (ii) an affirmation that he or she purchased one or more of the Software Products, and (iii) a statement that he or she has not received a refund of all monies paid for the Software Product(s). The Claim Form will not require notarization, but will require that the information supplied is true and correct.

“**Claims Deadline**” means the date by which all Claim Forms must be received to be considered timely and shall be set as the date ninety (90) days after the Settlement Class Notice is first disseminated to the Settlement Class. The Claims Deadline shall be clearly set forth in the notice to be provided to the Settlement Class, the Claim Form, the Court’s order granting Preliminary Approval, and the Judgment.

1           ***“Claims Period”*** means the period of time during which Settlement Class Members may  
 2 submit Claim Forms to receive Settlement Payments and shall commence on the date that the  
 3 Settlement Class Notice is first disseminated to the Settlement Class and shall end on the date  
 ninety (90) days thereafter.

4           ***“Class Counsel”*** means attorneys Jay Edelson, Rafey S. Balabanian, Benjamin H. Richman  
 5 and Chandler R. Givens of Edelson McGuire, LLC.

6           ***“Class Representative”*** means the named Plaintiff in this Action, James Gross.

7           ***“Court”*** means the United States District Court for the Northern District of California.

8           ***“Defendants’ Counsel”*** means Keith E. Eggleton, Maura L. Rees, and Anthony J Weibell  
 of Wilson Sonsini Goodrich & Rosati, P.C.

9           ***“Effective Date”*** means one business day following the later of: (i) the date upon which the  
 10 time expires for filing or noticing any appeal of the Judgment; (ii) if there is an appeal or appeals,  
 other than an appeal or appeals solely with respect to attorneys’ fees and reimbursement of  
 11 expenses, the date of completion, in a manner that finally affirms and leaves in place the Judgment  
 without any material modification, of all proceedings arising out of the appeal or appeals  
 12 (including, but not limited to, the expiration of all deadlines for motions for reconsideration or  
 petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings  
 arising out of any subsequent appeal or appeals following decisions on remand); or (iii) the date of  
 13 final dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to  
 the Judgment.

14           ***“Fairness Hearing”*** means the hearing before the Court where the Parties will request the  
 15 Judgment be entered by the Court finally approving the settlement as fair, reasonable and  
 adequate, and approving the Fee Award and the incentive award to the Class Representative.

16           ***“Fee Award”*** means the amount of attorneys’ fees and reimbursement of costs awarded by  
 17 the Court to Class Counsel through an Order in the form attached as Exhibit E to this Agreement.

18           ***“Judgment”*** means the Order of Final Judgment, in the form attached as Exhibit D to this  
 19 Agreement, to be entered by the Court finally approving this Agreement, without material  
 modifications that are unacceptable to the Parties.

20           ***“Nationwide”*** means the fifty (50) states, the District of Columbia, and the territories of the  
 21 United States of America.

22           ***“Notice Date”*** means the date upon which Settlement Class Notice is first disseminated to  
 the Settlement Class.

23           ***“Notice Expenses”*** means all reasonable costs and expenses expended in the execution of  
 24 the Notice Plan, including (i) all reasonable costs and expenses incurred in connection with  
 preparing, printing, mailing, disseminating, posting, promoting, emailing, hosting on the Internet  
 and publishing the Settlement Class Notice, identifying members of the Settlement Class and  
 25 informing them of the proposed settlement, and (ii) any other reasonable and necessary notice and  
 notice-related expenses.

26           ***“Notice of Intention to Appear and Object”*** is the written communication that may be filed  
 27 with the Court by a Settlement Class Member in order to object to the approval of this Agreement.  
 A copy of such Notice of Intention to Appear and Object must be signed by the Settlement Class  
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1 Member and also be sent to the Settlement Administrator, Class Counsel and Defendants' Counsel  
2 at the time of filing.

3 **"Notice Plan"** means the plan described in Section VIII of this Agreement for  
4 disseminating notice to the Settlement Class Members of the terms of this Agreement and the  
5 Fairness Hearing.

6 **"Opt-Out Period"** means the period for a Settlement Class Member to file a Request for  
7 Exclusion, which shall expire sixty (60) days following the date that the Settlement Class Notice is  
8 first disseminated to the Settlement Class, subject to Court approval. The deadline for filing a  
9 Request for Exclusion will be clearly set forth in the Settlement Class Notice.

10 **"Parties"** means, collectively, Plaintiff James Gross and Defendants Symantec Corp. and  
11 PC Tools, Ltd.

12 **"PC Tools"** means Defendant PC Tools, Ltd., an Irish limited liability company.

13 **"Person"** means any individual, corporation, trust, partnership, limited liability company or  
14 other legal entity and their respective predecessors, successors or assigns. The definition of  
15 "Person" is not intended to include any governmental agencies or governmental actors, including,  
16 without limitation, any state Attorney General office.

17 **"Preliminary Approval"** means the Court's Order Preliminarily Approving Class Action  
18 Settlement, in the form attached as Exhibit C to this Agreement, to be entered by the Court without  
19 material modifications that are unacceptable to the Parties.

20 **"Released Claims"** means any and all claims or causes of action of every kind and  
21 description (including any causes of action in law, claims in equity, complaints, suits or petitions)  
22 and any allegations of wrongdoing (including any assertions of liability, debts, legal duties, torts,  
23 unfair or deceptive practices, statutory violations, contracts, agreements, obligations, promises,  
24 promissory estoppel, detrimental reliance, or unjust enrichment) and any demands for legal,  
25 equitable or administrative relief (including any claims for injunction, rescission, reformation,  
26 restitution, disgorgement, constructive trust, compensatory damages, consequential damages,  
27 penalties, exemplary damages, punitive damages, attorneys' fees, costs, interest, or expenses) that  
28 the Releasing Parties had or have (including assigned claims and "Unknown Claims" as defined  
below) that have been or could have been asserted in the Action or in any other action or  
proceeding before any court, arbitrator(s), tribunal or administrative body (including any state,  
local or federal regulatory body), in any jurisdiction worldwide, regardless of whether the claims  
or causes of action are based on federal, state, or local law, statute, ordinance, regulation, contract,  
common law, or any other source, and regardless of whether they are known or unknown, foreseen  
or unforeseen, suspected or unsuspected, or fixed or contingent, arising out of, or related or  
connected in any way with the Released Conduct.

**"Released Conduct"** means any and all direct or indirect acts, omissions, representations,  
conduct, legal duties, unjust enrichment, trade practices, or obligations that arise out of, or are  
related or connected in any way with one or more of the following: (1) the design, use,  
functionality, operation, and/or performance of the Software Products, (2) the marketing and  
advertising of the Software Products as it relates to the design, use, functionality, operation and/or  
performance of the Software Products, and (3) warranties, representations, or omissions relating to  
the design, use, functionality, operation and/or performance of the Software Products. Nothing  
herein is intended to release any claims any governmental agency or governmental actor has  
against Defendants.

**"Released Parties"** means Symantec Corp. and PC Tools, Ltd., their respective



predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and any and all of their past, present, and future officers, directors, employees, stockholders, partners, servants, successors, attorneys, representatives, insurers, subrogees and assigns of any of the foregoing.

***“Releasing Parties”*** means Plaintiff, any Person in the Settlement Class, any Person claiming or receiving a Settlement Benefit, and each of their respective spouses, children, heirs, associates, co-owners, attorneys, agents, administrators, executors, devisees, predecessors, successors, assignees, representatives of any kind, shareholders, partners, directors, employees, or affiliates.

***“Remaining Funds”*** means the amount of the Settlement Fund remaining after the payment of all Approved Claims, Settlement Administration Expenses, Notice Expenses, the incentive award to the Class Representative, and the Fee Award to Class Counsel.

***“Request For Exclusion”*** is the written communication by or on behalf of a member of the Settlement Class in which he, she, or it requests to be excluded from the Settlement Class.

***“Settlement Administration Expenses”*** means Notice Expenses (defined above) and all other expenses incurred by the Settlement Administrator in handling the administration of the settlement and performing the services it is obligated to perform under this Agreement related to administration of the settlement, which may include the processing of Claim Forms submitted by Settlement Class Members pursuant to this Agreement.

***“Settlement Administrator”*** means, subject to approval of the Court, Epiq Systems, which will oversee the Notice Plan and the processing and payment of Settlement Class Members’ Claim Forms as set forth in this Agreement.

***“Settlement Benefit”*** means the benefit a Settlement Class Member may receive pursuant to this Agreement.

***“Settlement Payment”*** means the payment to be made on Approved Claims as described in Section VI.C of this Agreement.

***“Settlement Class”*** means all individuals and entities residing in the United States and its territories that, prior to the date on which the Court enters an order preliminarily approving the settlement, purchased from an authorized seller a license to use any of the following software in the United States and its territories: PC Tools Registry Mechanic and PC Tools Performance Toolkit released since June 1, 2007, and Norton Utilities 14.0 through 16.0. Excluded from the Settlement Class are the following: (i) the Defendants, the Settlement Administrator, and any respective parent, subsidiary, affiliate or control person of the Defendants, as well as the officers, directors, agents, servants, or employees of the Defendants, (ii) any judge presiding over this Action, (iii) all Persons whose claims against the Defendants have been fully and finally adjudicated and/or released, and (iv) the immediate family members of any such Person(s).

***“Settlement Class Member”*** or ***“Class Member”*** means a Person who falls within the definition of the Settlement Class as set forth in this Agreement and who has not submitted a valid Request for Exclusion.

***“Settlement Class Notice”*** means the form of Court-approved notice of this Agreement that is disseminated to the Settlement Class. The Parties have proposed that the Court approve notice in the form attached to this Agreement as Exhibit A.

***“Settlement Fund”*** means the monetary funds from which Defendants shall pay all Approved Claims, Settlement Administration Expenses, the incentive award to the Class



Representative, and the Fee Award to Class Counsel. The amount of the Settlement Fund is Eleven Million Dollars (\$11,000,000.00). The Settlement Fund represents the limit and extent of Defendants' monetary obligations under this Agreement. All Remaining Funds are the property of Defendants. The Settlement Fund is non-segregated, meaning Defendants will retain access to monies in the Settlement Fund and will not be required to place any monies in a separate account.

**"Settlement Website"** means the website to be created, launched, and maintained by the Settlement Administrator, and which allows for the electronic submission of claims, and provides access to relevant case documents including the Settlement Class Notice, information about the submission of Claim Forms and other relevant documents, including downloadable Claim Forms.

**"Software Products"** refers to PC Tools Registry Mechanic and PC Tools Performance Toolkit released since June 1, 2007, and Norton Utilities 14.0 through 16.0.

**"Symantec"** means Defendant Symantec Corporation, a Delaware corporation.

**"Unknown Claims"** shall have the meaning set forth in Section V.B. of this Agreement.

### **III. FOR SETTLEMENT PURPOSES ONLY**

This Agreement, whether or not consummated, and any actions or proceedings taken pursuant to this Agreement, are for settlement purposes only and Defendants specifically deny any and all wrongdoing. The existence of, terms in, and any action taken under or in connection with this Agreement will not constitute, be construed as, or be admissible in evidence as, any admission by Defendants of (i) the validity of any claim, defense or fact asserted in the Action or any other pending or future action, or (ii) any wrongdoing, fault, violation of law, or liability of any kind on the part of the Parties.

### **IV. REQUIRED EVENTS AND COOPERATION BY THE PARTIES**

**A. Preliminary and Final Approval.** Promptly after execution of this Agreement, Class Counsel shall submit this Agreement to the Court and shall move the Court to enter a Preliminary Approval Order, which shall include, among other provisions, a request that the Court:

1. Appoint Plaintiff James Gross as representative of the Settlement Class;
2. Appoint Class Counsel to represent the Settlement Class;
3. Certify the Settlement Class under Fed. R. Civ. P. 23 for settlement purposes only and without prejudice to Defendants' right to contest class certification if this Agreement is not approved;
4. Preliminarily approve this Agreement for purposes of disseminating notice

1 to the Settlement Class;

2 5. Approve the form and contents of the Settlement Class Notice and the  
3 method of its dissemination to members of the Settlement Class; and

4 6. Schedule a Fairness Hearing to review comments and/or objections  
5 regarding this Agreement, to consider its fairness, reasonableness and adequacy, and the  
6 application for an award of attorneys' fees and reimbursement of expenses and to consider  
7 whether the Court shall issue a Judgment approving this Agreement, granting Class  
8 Counsel's application for the Fee Award and an incentive award to the Class  
9 Representative, and dismissing the Action with prejudice.

10 A copy of the form of the proposed Preliminary Approval Order agreed to by the Parties is  
11 attached hereto as Exhibit C.

12 **B. Cooperation.** The Parties shall, in good faith, cooperate, assist and undertake all  
13 reasonable actions and steps in order to accomplish these required events on the schedule set by  
14 the Court, subject to the terms of this Agreement.

15 **C. Certification of the Settlement Class.** For purposes of this settlement only,  
16 Plaintiff and the Defendants stipulate to the certification of the Settlement Class, which is  
17 contingent upon the Court's final approval of this settlement and the occurrence of the Effective  
18 Date. Should the settlement not receive final approval from the Court or the Effective Date not  
19 occur, the certification of the Settlement Class shall be void and this Agreement will not constitute,  
20 be construed as, or be admissible in evidence as, an admission or be used for any purpose  
21 whatsoever in this Action or any other pending or future action.

22 **V. RELEASES**

23 **A. The Release.** Upon the entry of the Judgment, and in consideration of the  
24 Settlement Benefits described herein, each Settlement Class Member shall be deemed to have  
25 released, acquitted and forever discharged Defendants and each of the Released Parties from any  
26 and all "Released Claims."

27 **B. Unknown Claims.** The Release includes the release of Unknown Claims.  
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1 “Unknown Claims” means claims that could have been raised in this litigation and that Plaintiff,  
 2 any member of the Settlement Class or any Releasing Party, do not know or suspect to exist,  
 3 which, if known by him, her or it, might affect his, her or its agreement to release the Released  
 4 Parties or the Released Conduct or might affect his, her or its decision to agree, object or not to  
 5 object to the settlement. Upon the Effective Date, Plaintiff, any member of the Settlement Class,  
 6 and any Releasing Party shall be deemed to have, and shall have, expressly waived and  
 7 relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of  
 8 Section 1542 of the California Civil Code, which provides as follows:

9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE  
 10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER  
 11 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN  
 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER  
 SETTLEMENT WITH THE DEBTOR.

12 Upon the Effective Date, each of the Releasing Parties shall be deemed to have, and shall have,  
 13 waived any and all provisions, rights and benefits conferred by any law of any state, the District of  
 14 Columbia or territory of the United States, by federal law, or principle of common law, or the law  
 15 of any jurisdiction outside of the United States, which is similar, comparable or equivalent to  
 16 Section 1542 of the California Civil Code. Plaintiff, the Settlement Class, and the Releasing Parties  
 17 acknowledge that they may discover facts in addition to or different from those that they now  
 18 know or believe to be true with respect to the subject matter of the Release, but that it is their  
 19 intention to finally and forever settle and release the Released Claims, notwithstanding any  
 20 Unknown Claims they may have, as that term is defined in this Paragraph.

21 **C. Exclusive Remedy.** This Agreement shall be the sole and exclusive remedy of  
 22 Settlement Class Members against any of the Released Parties relating to any and all Released  
 23 Claims and/or Released Conduct. None of the Released Parties shall be subject to liability or  
 24 expense of any kind to any Settlement Class Member who has not timely filed a valid Request For  
 25 Exclusion with respect to any Released Claim. Upon the entry of the Judgment, each and every  
 26 Settlement Class Member shall be permanently barred and enjoined from initiating, asserting  
 27 and/or prosecuting any Released Claim(s) against any of the Released Parties in any court,  
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1 arbitration, tribunal, forum or proceeding.

2 **D. Jurisdiction of the Court.** The Parties agree that the Court shall retain exclusive  
3 and continuing jurisdiction over the Action, the Parties, Settlement Class Members, and the  
4 Settlement Administrator in order to interpret and enforce the terms, conditions, and obligations  
5 under this Agreement.

6 **VI. SETTLEMENT BENEFITS**

7 **A. Improvements to the Software Products.** As soon as practicable, but no later than  
8 ninety (90) days after the Effective Date, Defendants shall modify the current versions of the  
9 respective Software Products to:

10 1. Deactivate the “System Health” meter within the main, Graphical User  
11 Interface (“GUI”) such that a user’s System Health is reported as “unknown” until after the  
12 individual performs a scan with the Software Product to assess the registry and other monitored  
13 areas for invalid entries and other issues;

14 2. Refrain from claiming in the GUI prompt presented to users when upgrading  
15 from the trial version to the full version of the Software Products that upgrading will increase the  
16 “speed” of the user’s computer or will cause the computer to run “faster”;

17 3. No longer include representations within the Software Products that any  
18 specific errors require “immediate repair”;

19 4. No longer describe invalid registry entries as “errors”; and

20 5. Within the Software Products’ GUI “Help” section, include documentation  
21 that clearly explains the detection and reporting methodologies underlying the operations of the  
22 respective Software Products’ diagnostic scan, as described more fully in Section VI.B.

23 **B. New Documentation Explaining the Software Products’ Functionalities.** As  
24 soon as practicable, but no later than ninety (90) days after the Effective Date, Defendants agree to  
25 develop and publish new documentation to be associated with the modified versions of the  
26 Software Products described in VI.A that substantially conform to the following:  
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1                   1.       Documentation explaining the “System Health” meter. Defendants shall  
2 create documentation that further explains, in a clear and concise manner, the “System Health”  
3 meter, and the factors considered in determining a computer’s “System Health.”

4                   2.       Documentation explaining the effect of issues detected on a user’s computer  
5 by the Software Products. Defendants shall create documentation that explains, in a clear and  
6 concise manner, the potential harm that the issues detected by the Software Products might pose to  
7 a computer’s operations, including what is meant by a “High Priority” issue.

8           **C.       Settlement Payment.** Defendants shall establish the Settlement Fund in the amount  
9 of \$11,000,000.00, representing the maximum amount Defendants shall be obligated to pay under  
10 this Agreement, including Settlement Administration Expenses, Notice Expenses, the Fee Award,  
11 the incentive award to the Class Representative described in Section XI.A of this Agreement (the  
12 “Incentive Award”), and Settlement Payments to the Settlement Class Members. All such  
13 payments (other than any portion of Settlement Administration Expenses to be paid by Class  
14 Counsel) shall be paid from the Settlement Fund. Defendants represent that they have the financial  
15 ability to make the payments required under the terms of this Agreement and will make all such  
16 payments as they come due.

17                   1.       Settlement Payment Eligibility. To be eligible for a Settlement Payment  
18 under the Agreement, a Settlement Class Member must affirm in the Claim Form: (i) that he, she  
19 or it purchased one or more of the Software Products, and (ii) that he, she or it did not previously  
20 receive a full refund of all monies paid for the Software Product(s). Settlement Class Members  
21 who have received a full refund of the monies paid for a Software Product shall not be entitled to  
22 receive a Settlement Payment for such Software Product.

23                   2.       Individual Settlement Payments to Class Members. Each Settlement Class  
24 Member who physically signs or verifies electronically, and timely submits a Claim Form, in the  
25 form attached hereto as Exhibit B, providing all of the information requested in the Claim Form,  
26 and who is determined by the Settlement Administrator to be eligible for payment under the  
27 criteria set forth above in Section VI.C.1, shall be entitled to one payment of nine dollars (\$9.00) to  
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1 be paid from the Settlement Fund. In the event that the amount in the Settlement Fund, after  
 2 accounting for payment of Settlement Administration Expenses, Notice Expenses, the full amount  
 3 of the Fee Award and the Incentive Award, is not sufficient to pay in full all Settlement Payments,  
 4 the Settlement Administrator shall make the Settlement Payments on a *pro rata* basis. The  
 5 Defendants shall facilitate payments from the Settlement Fund in conjunction with the Settlement  
 6 Administrator.

7 3. Antivirus Software. Each Person who is identified to be a member of the  
 8 Settlement Class, and who does not timely submit a Request for Exclusion, shall be entitled to  
 9 receive three (3) months of free access to Symantec's proprietary antivirus software known as  
 10 Norton Antivirus. Notice of and access to the antivirus software shall be provided to each  
 11 identified member of the Settlement Class via email from the Settlement Administrator within  
 12 sixty (60) days after the Effective Date.

## 13 **VII. CLAIMS PROCESS & SETTLEMENT ADMINISTRATION**

### 14 **A. Submission of Claims**

15 1. Submission of Electronic and Hard Copy Claims. Settlement Class  
 16 Members may submit electronically verified Claim Forms to the Settlement Administrator through  
 17 the Settlement Website, or may download Claim Forms to be filled out, signed, and submitted  
 18 physically by mail to the Settlement Administrator. Claim Forms must be submitted electronically  
 19 or postmarked during the Claims Period and on or before the Claims Deadline. The Settlement  
 20 Administrator may reject any Claim Forms that are incomplete, inaccurate, or not timely received.

21 2. Requests for Claim Forms. Any Settlement Class Member unable or  
 22 unwilling to complete an online Claim Form or download a Claim Form from the Settlement  
 23 Website may call a toll free number to be established by the Settlement Administrator, or write to  
 24 the Settlement Administrator, to request a hardcopy Claim Form. In order to be sent a hardcopy  
 25 Claim Form, the Settlement Class Member must provide his, her or its name and mailing address.

### 26 **B. Settlement Administrator's Duties.**

27 1. Cost Effective Claims Processing. The Settlement Administrator shall, under  
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1 the supervision of the Court, administer the relief provided by this Agreement by processing Claim  
2 Forms in a rational, responsive, cost effective and timely manner.

3 2. Dissemination of Notices. The Settlement Administrator shall disseminate  
4 the Settlement Class Notice as provided in Section VIII *infra*.

5 3. Maintenance of Records. The Settlement Administrator shall maintain  
6 reasonably detailed records of its activities under this Agreement. The Settlement Administrator  
7 shall maintain all such records as required by applicable law in accordance with its business  
8 practices and such records will be made available to Class Counsel and Defendants' Counsel upon  
9 request. The Settlement Administrator shall also provide reports and other information to the Court  
10 as the Court may require. Upon request, the Settlement Administrator shall provide Class Counsel  
11 and Defendants' Counsel with information concerning notice, administration and implementation  
12 of the settlement. Should the Court request, the Parties in conjunction with the Settlement  
13 Administrator, shall submit a timely report to the Court summarizing the work performed by the  
14 Settlement Administrator, including a report of all amounts paid to Settlement Class Members on  
15 account of Approved Claims. Without limiting the foregoing, the Settlement Administrator shall:

16 (a) Receive Requests for Exclusion from Class Members to exclude  
17 themselves from the settlement and provide to Class Counsel and Defendants' Counsel a  
18 copy thereof within five (5) days of the deadline for submission of such forms and requests.  
19 If the Settlement Administrator receives any Requests for Exclusion or other requests from  
20 Settlement Class Members after the deadline for the submission of Requests for Exclusion,  
21 the Settlement Administrator shall promptly provide copies thereof to Class Counsel and  
22 Defendants' Counsel.

23 (b) Provide weekly or other periodic reports to Class Counsel and  
24 Defendants' Counsel upon request that include, without limitation, reports regarding the  
25 number of Claim Forms received, the number of Claim Forms approved by the Settlement  
26 Administrator, and the categorization and description of Claim Forms rejected by the  
27 Settlement Administrator.  
28



(c) Make available for inspection by Class Counsel and Defendants' Counsel the Claim Forms and any supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

(d) Cooperate with any audit by Class Counsel or Defendants' Counsel, who shall have the right but not the obligation to review, audit, and evaluate all claims for accuracy, veracity, completeness and compliance with the terms and conditions of this Agreement.

4. Creation of Settlement Website. The Settlement Administrator shall create the Settlement Website. The Settlement Website shall contain claims information and relevant documents, including but not limited to a copy of the Settlement Class Notice, the Claim Form, this Agreement, the Preliminary Approval Order entered by the Court, and the operative complaint in the Action. The Settlement Website shall also include a toll free telephone number and mailing address through which Settlement Class Members may contact the Settlement Administrator directly.

5. Review of Claim Forms. The Settlement Administrator shall reject a Claim Form where it is unsigned or incomplete, or there is evidence of abuse or fraud. The Settlement Administrator shall employ reasonable means to prevent fraud and to verify that Claim Forms have not been submitted by persons other than potential Settlement Class Members, such as by requiring that all electronic Claim Forms be submitted with a unique single-use code disseminated to Settlement Class Members with the Settlement Class Notice. Defendants' Counsel and Class Counsel shall have the right to challenge the acceptance or rejection of a Claim Form submitted by a Settlement Class Member and such challenges shall be timely decided by the Settlement Administrator, if not resolved by agreement of the Parties.

6. Requests for Additional Information. In the exercise of its duties outlined in this Agreement, the Settlement Administrator shall have the right to reasonably request additional information from the Parties or any Settlement Class Member.

7. Timing of Settlement Payments. The Settlement Administrator shall make all

1 Settlement Payments by check and mail them to Settlement Class Members within thirty (30) days  
2 after the Effective Date.

3 **C. Payment of Settlement Administration Expenses.** The first \$150,000.00 in  
4 Settlement Administration Expenses shall be paid by Defendants out of the Settlement Fund. Any  
5 additional Settlement Administration Expenses in excess of \$150,000.00 shall be paid one half by  
6 Defendants out of the Settlement Fund and one half by Class Counsel.

7 **VIII. SETTLEMENT CLASS NOTICE**

8 **A. Direct Notice.** Within seven (7) days after Preliminary Approval of this Agreement,  
9 including the form and content of the Settlement Class Notice, Defendants shall provide the  
10 Settlement Administrator with a list containing the last known e-mail addresses in their possession  
11 for the potential members of the Settlement Class. Within twenty-one (21) days after receipt of the  
12 e-mail list from Defendants, the Settlement Administrator shall disseminate notice of the  
13 settlement to the members of the Settlement Class via e-mail. The Settlement Class Notice shall be  
14 substantially in the form attached as Exhibit A and include an electronic link to the Settlement  
15 Website (as identified below) and an electronic single-use code or other reasonable fraud-  
16 prevention device employed by the Settlement Administrator to prevent submission of Claim  
17 Forms by persons other than potential Settlement Class Members. For e-mails that result in a  
18 bounce-back or are otherwise undeliverable, the Settlement Administrator shall re-send the e-mail.

19 **B. Settlement Website.** Within twenty-one (21) days after Preliminary Approval of  
20 this Agreement, including the form and content of the Settlement Class Notice, the Settlement  
21 Administrator shall cause the Settlement Website to be launched on the Internet in accordance with  
22 Section VII.B.4 of this Agreement.

23 **C. Contents of the Settlement Class Notice.** The Settlement Class Notice shall, *inter*  
24 *alia*, (i) specify the deadline for Settlement Class Members to opt-out of, object to, or otherwise  
25 comment upon the settlement by day, month, and year, and state that any objection to this  
26 Agreement, and any papers submitted in support of said objection, will only be considered by the  
27 Court at the Fairness Hearing if, on or before the deadline to opt-out of, object to, or otherwise  
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comment upon the settlement, the Person making the objection files a Notice of Intention to Appear and Object and copies of such papers he, she or it proposes to submit for consideration at the Fairness Hearing with the Clerk of the Court and delivers copies of the same by mail, hand, or overnight delivery service to both Class Counsel and Defendants' Counsel; (ii) instructions on how to submit a Claim Form; (iii) the deadline for Settlement Class Members to submit Claim Forms; and (iv) the date, time and location of the Fairness Hearing. A copy of the proposed notice is attached as Exhibit A hereto.

#### **IX. OPT-OUT AND OBJECTIONS**

**A. Right to Exclusion.** Any Settlement Class Member may submit a Request for Exclusion from the settlement at any time during the Opt-Out Period, which shall expire sixty (60) days following the date that the Settlement Class Notice is first disseminated to the members of the Settlement Class. To be valid, any Request for Exclusion must be in writing; identify the case name *Gross v. Symantec Corp. et al.*, No. 3:12-cv-00154; state the name, address and telephone of the member(s) of the Settlement Class seeking exclusion; identify the email address the Settlement Class Member believes was used to purchase, register or activate the Software Products purchased by the Settlement Class Member; be physically signed by the Person(s) seeking exclusion; and must be postmarked or received by the Settlement Administrator on or before the end of the Opt-Out Period. Each Request for Exclusion must also contain a statement to the effect that "I/We hereby request to be excluded from the proposed Settlement Class in *Gross v. Symantec Corp., et al.*" Any Person who elects to opt out of the Settlement Class shall not (i) be bound by any orders or Judgment entered in this Action, (ii) be entitled to relief under this Agreement, (iii) gain any rights by virtue of this Agreement, or (iv) be entitled to object to any aspect of this Agreement. No Person may opt out of the Settlement Class through "mass" or "class" opt-outs.

**B. Right to Object or Comment.** Any Settlement Class Member may comment in support of or in opposition to the settlement and may do so in writing, in person, or through counsel, at his or her own expense, at the Fairness Hearing. Except as the Court may order otherwise, no Settlement Class Member objecting to the settlement shall be heard and no papers,

1 briefs, pleadings, or other documents submitted by any such Settlement Class Member shall be  
 2 received and considered by the Court unless such Settlement Class Member shall both file with the  
 3 Court and mail to Class Counsel and Defendants' Counsel a written objection with the caption  
 4 *Gross v. Symantec Corp., et al.*, No. 3:12-cv-00154, that includes: (i) the Settlement Class  
 5 Member's full name and current address, (ii) the email address the Settlement Class Member  
 6 believes was used to purchase, register or activate the Software Products purchased by the  
 7 Settlement Class Member, (iii) a signed declaration that he or she believes himself or herself to be  
 8 a member of the Settlement Class, (iv) the specific grounds for the objection, (v) all documents or  
 9 writings that the Settlement Class Member desires the Court to consider, and (vi) a notice of  
 10 intention to appear (if any). All written objections must be filed and postmarked no later than sixty  
 11 (60) days following the date that the Settlement Class Notice is first disseminated to the Settlement  
 12 Class. Any Settlement Class Member who fails to object in the manner prescribed herein shall be  
 13 deemed to have waived his, her or its objections and forever be barred from making any such  
 14 objections in the Action or in any other action or proceeding. While the statement described in  
 15 subsection (ii) above is prima facie evidence that the objector is a member of the Settlement Class,  
 16 Plaintiff and/or Defendants may take discovery regarding the matter, subject to Court approval.

17 **X. TERMINATION OF AGREEMENT**

18 The Class Representative in this Action, on behalf of the Settlement Class Members, and  
 19 any of the Defendants, shall have the right to terminate this Agreement by providing written notice  
 20 of his or its election to do so ("Termination Notice") to all other Parties hereto within forty-five  
 21 (45) days of: (i) the Court's refusal to grant Preliminary Approval of the Agreement in any  
 22 material respect, (ii) receiving notification that the number of Persons who opt to be excluded from  
 23 the Settlement exceeds a level separately agreed to by Class Counsel and Defendants on the  
 24 ground that exclusion at that level threatens to frustrate the essential purpose of this Agreement,  
 25 (iii) the Court's refusal to enter the Judgment in any material respect, and (iv) the date upon which  
 26 the Judgment is modified or reversed in any material respect by any appellate or other court.

1 **XI. PLAINTIFF'S INCENTIVE AWARD, THE FEE AWARD AND COSTS**

2 **A. Incentive Award.** Defendants agree to pay the Class Representative, in addition to  
 3 any Settlement Payment under the Agreement and in recognition of his efforts on behalf of the  
 4 Settlement Class, subject to Court approval, the Incentive Award in the amount of two thousand  
 5 five hundred dollars (\$2,500.00). Defendants shall not object to or otherwise challenge, directly or  
 6 indirectly, Class Counsel's application for the Incentive Award to the Class Representative if  
 7 limited to this amount. Class Counsel has, in turn, agreed to seek no more than this amount from  
 8 the Court as the Incentive Award for the Class Representative. Defendants shall pay (by wire) to  
 9 Class Counsel from the Settlement Fund the Incentive Award approved by the Court within  
 10 fourteen (14) days after the Effective Date. The Court's Order approving the payment of an  
 11 incentive award to Plaintiff as Class Representative shall be substantially in the form attached  
 12 as Exhibit E to this Agreement.

13 **B. The Fee Award.** Defendants will not object to or otherwise challenge, directly or  
 14 indirectly, a Fee Award to Class Counsel, subject to Court approval, of up to One Million Six  
 15 Hundred Fifty Thousand Dollars (\$1,650,000.00), which shall include all attorneys' fees and  
 16 reimbursement of expenses associated with the Action. Class Counsel has, in turn, agreed to seek  
 17 no more than this amount from the Court as attorneys' fees and reimbursement of expenses.  
 18 Defendants shall pay (by wire) to Class Counsel from the Settlement Fund the Fee Award  
 19 approved by the Court within fourteen (14) days after the Effective Date. Notwithstanding  
 20 anything herein, the Parties agree that the Court's failure to approve, in whole or in part, the Fee  
 21 Award to Class Counsel shall not prevent the Agreement from becoming effective, nor shall it be  
 22 grounds for termination. The Court's Order approving the payment of a Fee Award to Class  
 23 Counsel shall be substantially in the form attached as Exhibit E to this Agreement.

24 **XII. JUDGMENT**

25 This Agreement is subject to and conditioned upon the issuance by the Court of the  
 26 Judgment, which will grant final approval of this Agreement and among other things shall:

- 27 1. Dismiss the Action with prejudice and without costs, except as contemplated  
 28

1 by this Agreement;

2 2. Decree that neither the Judgment nor this Agreement constitutes an  
3 admission by Defendants of any liability or wrongdoing whatsoever;

4 3. Bar and enjoin all Settlement Class Members from asserting against any of  
5 the Released Parties any and all Released Claims that the Settlement Class Member had,  
6 has, or may have in the future;

7 4. Release each Released Party from any Released Claims that are based upon  
8 or related to, directly or indirectly, in whole or in part (i) the allegations, facts, subjects, or  
9 issues set forth or raised in the Action, or (ii) the Released Conduct;

10 5. Determine that this Agreement is entered into in good faith and represents a  
11 fair, reasonable and adequate settlement that is in the best interests of the members of the  
12 Settlement Class; and

13 6. Preserve the Court's continuing and exclusive jurisdiction over the Parties to  
14 this Agreement, including Defendants and all Settlement Class Members, to administer,  
15 supervise, construe and enforce this Agreement in accordance with its terms for the mutual  
16 benefit of the Parties, but without affecting the finality of the Judgment.

17 A copy of the form of the proposed Order of Final Judgment agreed to by the Parties is attached  
18 hereto as Exhibit D.

19 **XIII. REPRESENTATIONS AND WARRANTIES**

20 Each signatory represents and warrants (i) that he, she, or it has all requisite power and  
21 authority to execute, deliver and perform this Agreement and to consummate the transactions  
22 contemplated herein, (ii) that the execution, delivery and performance of this Agreement and the  
23 consummation by it of the actions contemplated herein have been duly authorized by all necessary  
24 corporate action on the part of each signatory, and (iii) that this Agreement has been duly and  
25 validly executed and delivered by each signatory and constitutes its legal, valid and binding  
26 obligation.  
27  
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1 **XIV. NO ADMISSION OF WRONGDOING**

2 This Agreement, whether or not consummated, and any negotiations, proceedings or  
3 agreements relating to this Agreement, and any matters arising in connection with settlement  
4 negotiations, proceedings, or agreements:

5 1. Shall not be admissible in any action or proceeding for any reason, other than  
6 an action to enforce the terms hereof;

7 2. Shall not be described as, construed as, offered or received against the  
8 Released Parties as evidence of and/or deemed to be evidence of any presumption,  
9 concession, or admission by any Released Party of the truth of any fact alleged by Plaintiff;  
10 the validity of any claim that has been or could have been asserted in the Action or in any  
11 litigation; the deficiency of any defense that has been or could have been asserted in the  
12 Action or in any litigation; or any liability, negligence, fault, or wrongdoing of any of the  
13 Released Parties; and

14 3. Shall not be described as or construed against the Released Parties, Plaintiff,  
15 or any Settlement Class Members as an admission or concession that the consideration to be  
16 given hereunder represents the amount which could be or would have been awarded to said  
17 Plaintiff or the members of the Settlement Class after trial.

18 **XV. MISCELLANEOUS PROVISIONS**

19 **A. Entire Agreement.** This Agreement, including all exhibits hereto, shall constitute  
20 the entire Agreement among the Parties with regard to the subject matter hereof and shall  
21 supersede any previous agreements, representations, communications and understandings among  
22 the Parties. This Agreement may not be changed, modified, or amended except in writing signed  
23 by all Parties, subject to Court approval. The Parties contemplate that, subject to Court approval or  
24 without such approval where legally permissible, the exhibits to this Agreement may be modified  
25 by subsequent Agreement of counsel for the Parties prior to dissemination of the Settlement Class  
26 Notice to the Settlement Class.

27 **B. Governing Law.** This Agreement shall be construed under and governed by the  
28



1 laws of the State of California, applied without regard to laws applicable to choice of law.

2 **C. Execution by Counterparts.** This Agreement may be executed by the Parties in  
3 one or more counterparts, each of which shall be deemed an original but all of which together shall  
4 constitute one and the same instrument. Facsimile signatures or signatures sent via e-mail shall be  
5 treated as original signatures and shall be binding.

6 **D. Notices.** Any notice, instruction, application for Court approval or application for  
7 Court orders sought in connection with this Agreement or other document to be given by any Party  
8 to any other Party shall be in writing and delivered personally or sent by registered or certified  
9 mail, postage prepaid, if to Defendants to the attention of Defendants' Counsel of record, or if to  
10 Plaintiff or the Settlement Class to Class Counsel, or to other recipients as the Court may specify.

11 All notices to the Parties or counsel required by this Agreement, except Requests for  
12 Exclusion and objections, shall be made in writing and communicated by mail and e-mail to the  
13 following addresses:

14 If to Plaintiff or Class Counsel:

15 Jay Edelson  
16 Rafey S. Balabanian  
17 Benjamin H. Richman  
18 Chandler R. Givens  
19 Edelson McGuire LLC  
20 350 North LaSalle Street, Suite 1300  
Chicago, Illinois 60654  
Telephone: (312) 589-6370  
Facsimile: (312) 589-6378  
rbalabanian@edelson.com  
brichman@edelson.com

21 If to Defendants or Defendants' Counsel:

22 Maura L. Rees  
23 Anthony J Weibell  
24 Wilson Sonsini Goodrich & Rosati  
25 Professional Corporation  
26 650 Page Mill Road  
Palo Alto, California 94304-1050  
Telephone: (650) 493-9300  
Facsimile: (659) 565-5100  
mrees@wsgr.com  
aweibell@wsgr.com

1           **E. Binding Effect.** This Agreement shall be binding upon and inure to the benefit of  
2 the heirs, successors, assigns, executors and legal representatives of each of the Parties hereto.

3           **F. Construction.** For the purpose of construing or interpreting this Agreement, the  
4 Parties agree that this Agreement is to be deemed to have been drafted equally by all Parties hereto  
5 and shall not be construed strictly for or against any Party.

6           **G. Severability.** The waiver or breach by one Party of any provision of this Agreement  
7 shall not be deemed a waiver or breach of any other provision of this Agreement.

8           **H. Integration of Exhibits.** The exhibits to this Agreement are an integral and  
9 material part of the settlement and are hereby incorporated and made a part of the Agreement.

10           **I. Recitals.** The recitals contained in Section I of this Agreement are incorporated into  
11 this Agreement and are made a part hereof.

12           **J. Headings.** The headings contained in this Agreement are for reference purposes  
13 only and shall not affect in any way the meaning or interpretation of this Agreement.

14           **K. Enforcement of the Agreement.** In the event of a breach of provisions VI.A, VI.B,  
15 VI.C.2, VI.C.3 or XI of the Agreement, any non-breaching Party shall be entitled to bring an  
16 action seeking to enforce those provisions in the United States District Court for the Northern  
17 District of California. The prevailing Party in any such action to enforce these provisions of the  
18 Agreement shall be entitled to recover their reasonable attorneys' fees and expenses incurred in  
19 connection with remedying the breach.

20           IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be  
21 executed on its behalf by its duly authorized counsel of record, all as of the day set forth below.

22  
23                               [SIGNATURES APPEAR ON FOLLOWING PAGE]  
24  
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**JAMES GROSS**, individually and on behalf of all  
others similarly situated,

Dated: 02/09/2013

By (signature): *James E Gross*

Name (printed): James E. Gross

His (title): \_\_\_\_\_

**SYMANTEC CORP.,**

Dated: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

Its (title): \_\_\_\_\_

**PC TOOLS, LTD.,**

Dated: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

Its (title): \_\_\_\_\_

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**JAMES GROSS**, individually and on behalf of all  
others similarly situated,

Dated: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

His (title): \_\_\_\_\_

**SYMANTEC CORP.,**

Dated: 2/12/13

By (signature): 

Name (printed): Joseph FitzGerald

Its (title): SVP, Legal

**PC TOOLS, LTD.,**

Dated: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

Its (title): \_\_\_\_\_

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**JAMES GROSS**, individually and on behalf of all  
others similarly situated,

Dated: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

His (title): \_\_\_\_\_

**SYMANTEC CORP.**,

Dated: \_\_\_\_\_

By (signature): \_\_\_\_\_

Name (printed): \_\_\_\_\_

Its (title): \_\_\_\_\_

**PC TOOLS, LTD.**,

Dated: 2/13/13

By (signature): Ce. M. Osomi

Name (printed): NORMAN M. OSOMI

Its (title): SENIOR DIRECTOR - FINANCE

# Exhibit A

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT***Gross v. Symantec Corp., et al.***Case No. 3:12-cv-00154-CRB (U.S. District Court for the Northern District of California)**

**If you purchased certain Software Products described below  
between June 1, 2007 and [date of preliminary approval],  
you may be part of a class action settlement.**

**IMPORTANT****PLEASE READ THIS NOTICE CAREFULLY**

**THIS NOTICE RELATES TO THE PENDENCY OF A CLASS ACTION LAWSUIT  
AND IF YOU ARE A SETTLEMENT CLASS MEMBER, CONTAINS  
IMPORTANT INFORMATION ABOUT YOUR RIGHTS TO MAKE A CLAIM UNDER THE  
SETTLEMENT OR TO OBJECT TO THE SETTLEMENT**

*(A federal court authorized this notice. It is not a solicitation from a lawyer.)*

Your legal rights are affected whether or not you act. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
<b>SUBMIT A CLAIM FORM POSTMARKED OR COMPLETED ONLINE BY [DATE]</b>	The only way to receive a cash Settlement Benefit.
<b>EXCLUDE YOURSELF FROM THE CLASS BY [DATE]</b>	Receive no Settlement Benefit. This is the only option that allows you to pursue claims alleged in the Action against the Defendants by filing your own lawsuit at your own expense.
<b>COMMENT BY [DATE]</b>	Write to the Court about why you do, or do not, like the Settlement. You must remain in the Settlement Class to comment in support of or in opposition to the Settlement.
<b>ATTEND A HEARING ON [DATE]</b>	Ask to speak to the Court about the fairness of the Settlement. <i>(The date and time of the final Fairness Hearing is subject to change by Court Order. See Section 10 below.)</i>
<b>DO NOTHING</b>	Receive only non-cash Settlement Benefits (free software and injunctive relief) and give up your right to sue.

- These rights and options, and the deadlines to exercise them, are explained in this notice.
- The Court overseeing this case still has to decide whether to approve the Settlement. Payments and other Settlement Benefits will be provided if the Court approves the Settlement and after any appeals are resolved.



## 1. What is this notice and why should I read it?

This notice is to inform you of the settlement of a class action lawsuit in the case captioned *Gross v. Symantec Corp., et al.*, Case No. 3:12-cv-00154-CRB (the “Action”), brought on behalf of the Settlement Class, and pending in the United States District Court for the Northern District of California. You need not live in California to get a benefit under the Settlement, but you must live in the United States and its territories. The Court has granted preliminary approval of the Settlement and has set a final hearing to take place on [date] at [time] at the Phillip Burton Federal Building and United States Courthouse, located at 450 Golden Gate Avenue, San Francisco, California, 94102, in Courtroom [6, 17th Floor] to determine if the Settlement is fair, reasonable and adequate, and to consider the request by Class Counsel for attorneys’ fees, expenses, and an incentive award for the Class Representative. This notice describes the Settlement. Please read this notice carefully to determine whether you wish to participate in the Settlement. Your rights and options—and the deadlines to exercise them—are explained in this notice. Your legal rights are affected regardless of whether you act.

## 2. What is a class action lawsuit and what is this lawsuit about?

A class action is a lawsuit in which one or more plaintiffs—in this case, Plaintiff James Gross (“Plaintiff”)—sue on behalf of themselves and other people who allegedly have similar claims. Here, Plaintiff filed a class action complaint against Defendants Symantec Corp. (“Symantec”) and PC Tools, Ltd. (“PC Tools”) in the Northern District of California on behalf of people who purchased certain of Defendants’ Software Products—PC Tools Registry Mechanic, PC Tools Performance Toolkit, and Norton Utilities—alleging that the Software Products did not perform certain functions as advertised. A more complete description of the allegations is set forth in the Second Amended Complaint, which is available on the Settlement Website at [URL].

Although Symantec and PC Tools deny Plaintiff’s claims of wrongdoing, the Parties have agreed to settle all claims against Defendants by entering into a written settlement agreement entitled “Stipulation of Class Action Settlement” (the “Agreement”). The individuals on whose behalf the Settlement has been made are called “Settlement Class Members.” The individuals who make up the Settlement Class (i.e., the Settlement Class Members) are described in Section 4 below.

The Agreement has already been preliminarily approved by the Court. Nevertheless, because the settlement of a class action determines the rights of all members of the proposed class, the Court has ordered this notice to be disseminated to the Settlement Class and is required to hold a Fairness Hearing to determine whether final approval may be granted to the Settlement, before it can take effect.

The Court has conditionally certified the Settlement Class for settlement purposes, so that Settlement Class Members can be given this notice and the opportunity to exclude themselves from the Settlement Class, voice their support or opposition to the Settlement, and explain how those who do not exclude themselves from the Settlement Class may submit a Claim Form to get

the monetary benefit offered by the Settlement. If the Settlement is not granted final approval by the Court, or the Parties terminate it, the Settlement will be void, and the lawsuit will continue as if there had been no settlement and no certification of the Settlement Class.

### **3. Why is there a settlement?**

The Court has not decided in favor of either side in the case. The Defendants deny all allegations of wrongdoing or liability against them and assert that their conduct was lawful. The Defendants are settling to avoid the expense, inconvenience, and inherent risk and disruption of litigation. Plaintiff and his attorneys believe that the settlement is in the best interests of the Settlement Class because it provides an appropriate recovery for Settlement Class Members now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals.

### **4. Who is included in the Settlement?**

The Settlement Class includes all individuals and entities residing in the United States and its territories that, prior to [date of preliminary approval], purchased from an authorized seller a license to use any of the following software in the United States and its territories: PC Tools Registry Mechanic and PC Tools Performance Toolkit released since June 1, 2007, and Norton Utilities 14.0 through 16.0.

### **5. What does the Settlement provide?**

#### **A. Monetary Relief and Free Software.**

**i. Payments.** Defendants have agreed to create an \$11,000,000.00 Settlement Fund from which they will make a one-time check payment of nine dollars (\$9.00) to each Settlement Class Member who submits a valid Claim Form in accordance with the procedure set forth below if they have purchased Software Product(s) for which they have not already received a full refund. In addition, Defendants have agreed to pay from the Settlement Fund Class Counsel's attorneys' fees and costs not to exceed \$1,650,000.00, an incentive award to the Class Representative totaling \$2,500.00, and the full administrative costs of the Settlement up to \$150,000.00, and half of any additional administrative costs thereafter.

If you are a member of the Settlement Class (defined in the answer to Question No. 4 above), and you choose to stay in the Settlement Class, you can submit a Claim Form to receive a check payment.

**ii. Antivirus Software.** Each Settlement Class Member shall also receive three (3) months of free access to Symantec's proprietary antivirus software known as Norton Antivirus, regardless of whether they submit a Claim Form or have already received a full refund of the money paid to purchase a Software Product.

**iii. Process.** To be eligible for a check payment under the Settlement, a Settlement Class Member must affirm in the Claim Form: (1) that he, she or it purchased one or more of the Software Products, and (2) that he, she or it did not previously receive a full refund of all monies paid for the Software Product(s).

You can download a Claim Form from the Settlement Website by going to [URL] and following the instructions provided there. You can also obtain a Claim Form by writing to the Settlement Administrator at [address] or calling toll-free [phone number]. Your Claim Form must be postmarked or electronically submitted by [date].

**B. Prospective Relief.** As part of the Settlement, the Defendants have agreed that, as soon as practicable, but no later than ninety (90) days from the Effective Date of the Agreement, they will modify the current versions of the respective Software Products to: (i) deactivate the “System Health” meter within the main Graphical User Interface (“GUI”) such that a user’s System health is reported as “unknown” until after the individual performs a scan with the Software Product to assess the registry and other monitored areas for invalid entries and other uses; (ii) refrain from claiming in the GUI prompt presented to users when upgrading from the trial version to the full version of the Software Products that upgrading will increase the “speed” of the user’s computer or will cause the computer to run “faster”; (iii) no longer include representations within the Software Products that any specific errors require “immediate repair”; (iv) no longer describe invalid registry entries as “errors”; and (v) within the Software Products’ GUI “Help” section, include documentation that clearly explains the detection and reporting methodologies underlying the operations of the respective Software Products’ diagnostic scan.

Defendants have also agreed to develop and publish new documentation that explains, in a clear and concise manner, the meaning of the “System Health” meter and the factors considered in determining a computer’s “System Health” as well as describes the potential harm posed by the issues detected, including what is meant by a “High Priority” issue.

## 6. Who represents the Settlement Class?

**A. Class Representative.** For purposes of the Settlement, the Court has appointed Plaintiff James Gross to serve as the Class Representative.

**B. Settlement Class Counsel.** The Court has approved the appointment of Jay Edelson, Rafey S. Balabanian, Benjamin H. Richman and Chandler R. Givens of Edelson McGuire LLC as Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

From the beginning of the case in January 2012 to the present, Class Counsel have not received any payment for their services in prosecuting the case or obtaining the Settlement, nor have they been reimbursed for any out-of-pocket expenses they have incurred. Class Counsel will apply to the Court for an award of attorneys’ fees and actual expenses (including their court costs) in a total amount not to exceed \$1,650,000.00. The Defendants have agreed not to oppose Class Counsel’s application for an award of attorneys’ fees and reimbursable expenses up to \$1,650,000.00. If the Court approves the attorneys’ fee application, the award will be paid by

Defendants. The Settlement Class Members will not have to pay anything toward the fees or expenses of Class Counsel. Class Counsel will seek final approval of the Settlement on behalf of all Settlement Class Members. You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense.

#### **7. How can I exclude myself from the Settlement Class?**

You can get out of the Settlement Class by “excluding” yourself. If you exclude yourself, you won’t be able to submit a Claim Form, and you won’t be allowed to claim any of the relief offered by the Settlement. If you exclude yourself from the Settlement Class, you can pursue whatever legal rights you may have in any separate proceeding if you choose to do so, but you will have to do so at your own expense.

To exclude yourself from the Settlement Class, you must send a letter saying that you want to be excluded from the Settlement Class in *Gross v. Symantec Corp., et al.* Your Request for Exclusion must include your name, address and telephone number, identify the email address you believe was used to purchase, register or activate the Software Products you purchased, and be physically signed with a statement to the effect that: “I/We hereby request to be excluded from the proposed Settlement Class in *Gross v. Symantec Corp., et al.*” **Your Request for Exclusion must be postmarked no later than [date], and sent to the Settlement Administrator at the following address: [insert address].**

A Request for Exclusion that does not include all of the above information, that is sent to an address other than the one listed above, or that is not received on time, will not be valid and the person(s) asking to be excluded will be considered a member of the Settlement Class, and will be bound as a Settlement Class Member.

**If you elect to exclude yourself, you will (i) not have any rights as a member of the Settlement Class pursuant to the Agreement, (ii) not be able to receive any Settlement Benefit as provided in the Agreement, (iii) not be bound by any further orders or judgments in this case, and (iv) not be entitled to object to any aspect of the Agreement. If you proceed on an individual basis, you might receive more, or less, of a benefit than you would otherwise receive under the Agreement, or no benefit at all.**

#### **8. How can I tell the Court what I think about the Settlement?**

**If you do not exclude yourself from the Settlement Class, you or your attorney can comment in support of or in opposition to the Settlement and have the right to appear before the Court to do so.** Your objection to or comment on the Settlement must be submitted in writing by [date] and must be sent to the Court and the attorneys for the Parties at the addresses below:

**Clerk of the Court**

Clerk of the Court  
U.S. Dist. Ct., N.D. Cal.  
450 Golden Gate Avenue  
San Francisco, CA 94102

**Settlement Class Counsel**

Jay Edelson  
Rafey S. Balabanian  
Benjamin H. Richman  
Chandler R. Givens  
Edelson McGuire LLC  
350 N. LaSalle, Suite 1300  
Chicago, IL 60654

**Defendants' Counsel**

Maura L. Rees  
Anthony J Weibell  
Wilson Sonsini Goodrich & Rosati  
Professional Corporation  
650 Page Mill Road  
Palo Alto, California 94304-1050

The objection or comment must be in writing and include the case name *Gross v. Symantec Corp., et al.*, Case No. 3:12-cv-00154-CRB, and: (a) the Settlement Class Member's full name and current address; (b) the email address the Settlement Class Member believes was used to purchase, register or activate the Software Product(s) purchased by the Settlement Class Member; (c) a signed declaration that he or she believes himself or herself to be a member of the Settlement Class; (d) the specific grounds for the objection; (e) all documents or writings that the Settlement Class Member desires the Court to consider; and (f) a notice of intention to appear at the Fairness Hearing (if any). The Court will consider all properly filed comments from Settlement Class Members.

If you do not submit a written comment on the Settlement or the application of Class Counsel for an incentive award and attorneys' fees and expenses in accordance with the deadline and procedure set forth above, and you are not granted relief by the Court, you will waive your right to be heard at the Fairness Hearing.

If you do not object as described in this notice, and you do not exclude yourself from the Settlement Class, you will be deemed to have consented to the Court's certification of, and jurisdiction over, the Settlement Class, and, if the Settlement is granted final approval, to have released the Released Claims (defined in the Agreement, available at [\[URL\]](#)).

## 9. What is the effect of final approval of the Settlement?

If the Court grants final approval to the Settlement, the Court will enter a final order and judgment and dismiss the case as to the Defendants. Claim Forms and payments under the Settlement will then be processed, claims payments will be distributed, and access to the free antivirus software will be distributed. The release by Settlement Class Members will also take effect. All members of the Settlement Class will release, acquit and forever discharge the Defendants and each of the Released Parties from any and all Released Claims (as defined in the Agreement). Please refer to Section V of the Agreement for a full description of the claims and persons that will be released upon final approval of the Settlement.

Whether you consider the Settlement favorable or unfavorable, any and all members of the Settlement Class who do not exclude themselves from the Settlement Class will not be permitted to continue to assert Released Claims in any other litigation against the Defendants or other

persons and entities covered by the Release. You can obtain a copy of the Agreement from the Clerk of the Court, online at [Settlement Website URL], or by writing to the Settlement Administrator at [address]. If you do not wish to be a Settlement Class Member, you must exclude yourself from the Settlement Class (see No. 7, above).

If the Settlement is not approved, the case will proceed as if no settlement had been attempted or reached. There can be no assurance that if the Settlement is not approved and the case resumes, the Settlement Class will recover more than is provided for under the Agreement, or will recover anything at all.

#### **10. When and where will the Court hold a hearing on the fairness of the Settlement?**

A Fairness Hearing has been set for [date] at [time], before The Honorable Charles R. Breyer at the Phillip Burton Federal Building and United States Courthouse, located at 450 Golden Gate Avenue, San Francisco, California, 94102, in Courtroom [6, 17th Floor]. At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed Settlement, including the amount requested by Class Counsel for attorneys' fees and expenses. You do not need to attend this hearing. You also do not need to attend to have a comment or objection considered by the Court.

**Note:** The date and time of the Fairness Hearing are subject to change by Court Order.

#### **11. Do I have to come to the Fairness Hearing? May I speak at the hearing?**

You do not need to attend the Fairness Hearing to remain a Settlement Class Member or submit a Claim Form. You or your own lawyer may attend the hearing if you wish, at your own expense.

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning the proposed Settlement or the application of Class Counsel for attorneys' fees and expenses by following the instructions in No. 8 above.

#### **12. How do I receive the Settlement Benefits?**

If you do not exclude yourself from the Settlement Class, and would like to receive the monetary benefit provided by the Settlement, you must submit a timely and valid Claim Form as set forth in No. 5 above. **Claim Forms must be submitted online or by mail postmarked by [date].** You can submit an electronic Claim Form online at [URL], or obtain a copy of the Claim Form by downloading it from [URL] or by writing to the Settlement Administrator at: [address] or calling toll-free [phone number].

#### **13. What happens if I do nothing at all?**

If you do nothing, you will receive no payment under the Settlement, but you will receive three

(3) months of free access to Norton Antivirus. You will also still be part of the Settlement Class and subject to the Release described in Section V of the Agreement. This means you will not be permitted to continue to assert Released Claims in any other case against Defendants or other persons and entities covered by the Release. Please refer to Section V of the Agreement for a full description of the claims and persons who will be released upon final approval of the Settlement.

#### **14. Where can I get additional information?**

This notice provides only a summary of the matters relating to the Settlement. For more detailed information, you may wish to review the Agreement. You can view the Agreement and get more information at [URL]. You can also get more information by writing to the Settlement Administrator at [address] or calling toll-free [number]. The Agreement and all other pleadings and papers filed in the case are available for inspection and copying during regular business hours at the office of the Clerk of the United States District Court for the Northern District of California (San Francisco Division), at the Phillip Burton Federal Building and United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102.

If you would like additional information, you can also write to Class Counsel at the address listed in No. 8 above.

**PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR THE DEFENDANTS WITH  
QUESTIONS ABOUT THE SETTLEMENT.**



# **Exhibit B**

Gross v. Symantec Corp., et al., Case No. 3:12-cv-00154-CRB (N.D. Cal.)  
CLAIM FORM

**NOTE:** If you are a Settlement Class Member and believe you are entitled to receive a cash payment for the Software Product(s) you purchased from Symantec Corp. and/or PC Tools, Ltd., you must complete this Claim Form pursuant to the terms of the Settlement Agreement. For your claim to be considered valid, you must provide the information requested below, including your signature (or electronic verification). Your claim form must be postmarked or completed online on or before [date].

**Instructions for completing this form are found below.** Please fill out the information below completely. If the information you provide is insufficient to determine whether you are a Settlement Class Member, your claim may be rejected.

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email Address (to which the Settlement Notice was sent): \_\_\_\_\_

Phone Number (Optional. The Settlement Administrator may call you for additional information to process your claim, if necessary): \_\_\_\_\_

Please note that the term "Software Products" refers to PC Tools Registry Mechanic and PC Tools Performance Toolkit software, and Norton Utilities software versions 14.0 through 16.0, purchased from an authorized seller during the period June 1, 2007 through [date of preliminary approval].

These products and services are described in more detail on the Settlement Website at [URL].

**PRODUCT PURCHASE INFORMATION:**

1. I, \_\_\_\_\_ (your name), submit this declaration.

2. I paid for the following Software Products (name of Software Products): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Have you received a full refund of the money you paid for the Software Product(s) listed in No. 2 above? (Yes or No): \_\_\_\_\_  
\_\_\_\_\_

\*\*\*If you have already received a full refund of the money you paid for the Software Product(s) listed above, you are not entitled to any additional payment under this Settlement.\*\*\*

The Parties have the right to audit all claims for accuracy, veracity and compliance with the terms and conditions of the settlement Agreement.

I declare under penalty of perjury of the laws of the United States that all of the foregoing information I have provided is true and correct.

Dated: \_\_\_\_\_, 20\_\_\_\_. \_\_\_\_\_

**INSTRUCTIONS FOR COMPLETION OF THIS CLAIM FORM:**

1. Please print or type all information legibly and carefully. If and when the Settlement receives final approval from the Court and any appeals of such determination have been resolved in favor of approval of the Settlement, a check will be sent to all Settlement Class Members whose names appear on a valid Claim Form. An e-mail with instructions about how to obtain three (3) months of free access to Symantec's Norton Antivirus software will be sent to all Settlement Class Members.
2. You may submit a claim only if you paid for one or more of the Software Products listed above during the period June 1, 2007 through [date of preliminary approval].
3. If your claim is valid and timely, and you have not already received a full refund of the money you paid for the Software Product(s) you purchased, you may recover a one-time payment of \$9.00.

# Exhibit C

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

13 JAMES GROSS, individually and on behalf of  
14 all others similarly situated,

15 *Plaintiff,*

16 v.

17 SYMANTEC CORPORATION, a Delaware  
18 corporation, and PC TOOLS, LTD., an Irish  
19 limited liability company,

20 *Defendants.*  
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Case No. 3:12-cv-00154-CRB

**[PROPOSED] PRELIMINARY APPROVAL  
ORDER**

Judge: Honorable Charles R. Breyer  
Action Filed: January 10, 2012

1 This matter having come before the Court on Plaintiff's motion for preliminary approval  
2 (the "Motion for Preliminary Approval") of a proposed class action settlement of the above-  
3 captioned action (the "Action") between Plaintiff James Gross and Defendants Symantec Corp.  
4 and PC Tools, Ltd. (collectively, "Defendants"), pursuant to the Parties' Stipulation of Class  
5 Action Settlement (the "Agreement"), and having duly considered the papers and arguments of  
6 counsel, the Court hereby finds and orders as follows:

7 1. Unless defined herein, all defined terms in this Order shall have the respective  
8 meanings set forth in the Agreement.

9 2. The Court has conducted a preliminary evaluation of the Settlement set forth in the  
10 Agreement for fairness, adequacy, and reasonableness. Based on this preliminary evaluation, the  
11 Court finds that (i) there is cause to believe that the Settlement is fair, reasonable, and adequate,  
12 and within the range of possible approval, (ii) the Settlement has been negotiated in good faith at  
13 arms-length between experienced attorneys familiar with the legal and factual issues of this case,  
14 and (iii) the notice of the material terms of the Settlement to Settlement Class Members for their  
15 consideration and reaction is warranted. Therefore, the Court grants preliminary approval of the  
16 Settlement.

17 3. Pursuant to Federal Rule of Civil Procedure 23(b)(2) and (b)(3), and for settlement  
18 purposes only, the Court conditionally certifies the proposed Settlement Class, consisting of:

19 All individuals and entities residing in the United States and its territories that, prior  
20 to the date of this Order, purchased from an authorized seller a license to use any of  
21 the following software in the United States and its territories: PC Tools Registry  
Mechanic and PC Tools Performance Toolkit released since June 1, 2007, and  
Norton Utilities 14.0 through 16.0.

22 4. For settlement purposes only, the Court hereby preliminarily approves the  
23 appointment of Plaintiff James Gross as Class Representative.

24 5. For settlement purposes only, the Court hereby preliminarily approves the  
25 appointment of Jay Edelson, Rafey S. Balabanian, Benjamin H. Richman, and Chandler R. Givens  
26 of Edelson McGuire LLC, as Class Counsel.

1           6.       On [date] at [time] or at such other date and time later set by Court Order, this  
2 Court will hold a Fairness Hearing on the fairness, adequacy, and reasonableness of the Settlement  
3 and to determine whether (i) final approval of the Settlement should be granted, and (ii) Class  
4 Counsel's application for attorneys' fees and expenses, and an incentive award to Plaintiff, should  
5 be granted, and in what amount. No later than the date fourteen (14) days prior to the date for  
6 Settlement Class Members to comment in support of or in opposition to the Settlement (as set forth  
7 below), Plaintiff shall file his papers in support of Class Counsel's application for attorneys' fees  
8 and expenses, and an incentive award to him as Class Representative. No later than the date  
9 twenty-eight (28) days prior to the Fairness Hearing, Plaintiff must file his papers in support of  
10 final approval of the Settlement and in response to any objections. Defendants may (but are not  
11 required to) file papers in support of final approval of the Settlement, so long as they do so no later  
12 than the date twenty-eight (28) days prior to the Fairness Hearing.

13           7.       Pursuant to the Agreement, Epiq Systems is hereby appointed as Settlement  
14 Administrator and shall be required to perform all the duties of the Settlement Administrator as set  
15 forth in the Agreement and this Order. To aid in the efficient submission of Claim Forms, the  
16 Agreement provides for Settlement Class Members to submit Claim Forms online without the need  
17 for a manual signature. However, by submitting an online Claim Form, such Settlement Class  
18 Members shall be bound to the same extent as if they had used a manual signature.

19           8.       The Court approves the proposed Notice Plan for giving direct notice to the  
20 Settlement Class by e-mail and establishing a Settlement Website, as more fully described in the  
21 Agreement. The Notice Plan, in form, method, and content, complies with the requirements of  
22 Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The  
23 Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the  
24 Notice Plan no later than twenty-eight (28) days following the entry of this Preliminary Approval  
25 Order and in accordance with the terms of the Agreement.

26           9.       All persons who meet the definition of the Settlement Class and who wish to  
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1 exclude themselves from the Settlement Class must submit their Request for Exclusion in writing,  
 2 identifying the case name *Gross v. Symantec Corp., et al.*, and state the name, address and  
 3 telephone number of the Settlement Class Member(s) seeking exclusion as well as the email  
 4 address the Settlement Class Member(s) believes was used to purchase, register or activate the  
 5 Software Products purchased. Each Request for Exclusion must also be physically signed with a  
 6 statement to the effect that: “I/We hereby request to be excluded from the proposed Settlement  
 7 Class in *Gross v. Symantec Corp., et al.*” The request must be mailed to the Settlement  
 8 Administrator at the address provided in the notice and postmarked no later than sixty (60) days  
 9 following the date that the Settlement Class Notice is first disseminated to the Settlement Class. A  
 10 Request for Exclusion that does not include all of the foregoing information, that is sent to an  
 11 address other than the one designated in the notice, or that is not received within the time specified,  
 12 shall be invalid and any person(s) serving such a request shall be deemed a member of the  
 13 Settlement Class, and shall be bound as a Settlement Class Member(s) by the Settlement. The  
 14 Settlement Administrator shall promptly forward copies of all Requests for Exclusion to Class  
 15 Counsel and Defendants’ Counsel.

16 10. Any member of the Settlement Class may comment in support of or in opposition to  
 17 the Settlement; *provided, however*, that all comments and objections must be filed with the Court  
 18 and received by Class Counsel and Defendants’ Counsel prior to the Fairness Hearing. A  
 19 Settlement Class Member who objects to the Settlement need not appear at the Fairness Hearing  
 20 for his, her or its comment to be considered by the Court; however, all papers, briefs, pleadings, or  
 21 other documents that any objector would like the Court to consider (“Objections”) must be filed  
 22 with the Court, with a copy postmarked to Class Counsel and Defendants’ Counsel, no later than  
 23 sixty (60) days following the date that the Settlement Class Notice is first disseminated to the  
 24 Settlement Class. All Objections shall include the caption *Gross v. Symantec Corp., et al.*, No.  
 25 3:12-cv-00154-CRB, and provide: (i) the Settlement Class Member’s full name and current  
 26 address; (ii) the email address the Settlement Class Member believes was used to purchase, register  
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1 or activate the Software Products purchased, (iii) a signed declaration that he or she believes  
2 himself or herself to be a member of the Settlement Class; (iv) the specific grounds for the  
3 objection; (v) all documents or writings that such Settlement Class Member desires the Court to  
4 consider; and (vi) a notice of intention to appear at the Fairness Hearing (if any).

5 11. Any Settlement Class Member who fails to object in the manner prescribed herein  
6 shall be deemed to have waived his, her or its objections and forever be barred from making any  
7 such objections in this Action or in any other action or proceeding. While the declaration described  
8 in subparagraph 10(iii) is *prima facie* evidence that the objector is a member of the Settlement  
9 Class, Plaintiff or Defendants or both may take discovery regarding the matter, subject to Court  
10 approval. If a Settlement Class Member does not submit a written comment on the proposed  
11 Settlement or the application of Class Counsel for an incentive award and attorneys' fees and  
12 expenses in accordance with the deadline and procedure set forth in the notice, and the Settlement  
13 Class Member is not granted relief by the Court, the Settlement Class Member will be deemed to  
14 have waived his, her or its right to be heard at the Fairness Hearing.

15 12. The Agreement and the proceedings and statements made pursuant to the  
16 Agreement or papers filed relating to the approval of the Agreement, and this Order, are not and  
17 shall not in any event be construed as, offered in evidence as, received in evidence as, and/or  
18 deemed to be evidence of a presumption, concession, or an admission of any kind by any of the  
19 Parties of (i) the truth of any fact alleged or the validity of any claim or defense that has been,  
20 could have been, or in the future might be asserted in the Action, any other litigation, court of law  
21 or equity, proceeding, arbitration, tribunal, investigation, government action, administrative  
22 proceeding, or other forum, or (ii) any liability, responsibility, fault, wrongdoing, or otherwise of  
23 the Parties. Defendants have denied and continue to deny the claims asserted by Plaintiff. Nothing  
24 contained herein shall be construed to prevent the Parties from offering the Agreement into  
25 evidence for the purposes of enforcement of the Agreement.

26 13. The certification of the Settlement Class shall be binding only with respect to the  
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1 settlement of the Action. In the event that the Agreement is terminated pursuant to its terms or is  
2 not approved in all material respects by the Court, or such approval is reversed, vacated, or  
3 modified in any material respect by this or any other court, the certification of the Settlement Class  
4 shall be deemed vacated, the Action shall proceed as if the Settlement Class had never been  
5 certified (including Defendants' right to oppose any subsequent motion for class certification), and  
6 no reference to the Settlement Class, the Agreement, or any documents, communications, or  
7 negotiations related in any way thereto shall be made for any purpose.

8  
9 **IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2013.

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12 HONORABLE CHARLES R. BREYER  
13 UNITED STATES DISTRICT JUDGE  
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# Exhibit D

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 JAMES GROSS, individually and on behalf  
13 of all others similarly situated,

14 *Plaintiff,*

15 v.

16 SYMANTEC CORPORATION, a Delaware  
17 corporation, and PC TOOLS, LTD., an Irish  
18 limited liability company,

19 *Defendants.*

Case No. 3:12-cv-00154-CRB

**[PROPOSED] FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH PREJUDICE**

Judge: Honorable Charles R. Breyer  
Action Filed: January 10, 2012

1 The Court, having considered Plaintiff's Motion for Final Approval (the "Motion for Final  
2 Approval") of a proposed class action settlement of the above-captioned action (the "Action")  
3 between Plaintiff James Gross and Defendants Symantec Corp. and PC Tools, Ltd. (collectively,  
4 "Defendants"), pursuant to the Parties' Stipulation of Class Action Settlement (the "Agreement"),  
5 and having duly considered the papers and arguments of counsel, Plaintiff's Motion is hereby  
6 GRANTED and it is hereby ORDERED, ADJUDGED, and DECREED THAT:

7 1. Unless defined herein, all capitalized terms in this Order shall have the respective  
8 meanings ascribed to them in the Agreement.

9 2. This Court has jurisdiction over the subject matter of the Action and over all Parties  
10 to the Action, including all Settlement Class Members.

11 3. On [date], this Court preliminarily approved the Settlement and certified, for  
12 settlement purposes, the Settlement Class consisting of:

13 All individuals and entities residing in the United States and its territories that, prior  
14 to [date of preliminary approval], purchased from an authorized seller a license to  
15 use any of the following software in the United States and its territories: PC Tools  
Registry Mechanic and PC Tools Performance Toolkit released since June 1, 2007,  
and Norton Utilities 14.0 through 16.0.

16 4. The persons listed on Addendum A hereto are found to have validly excluded  
17 themselves from the Settlement Class in accordance with the provisions of the Preliminary  
18 Approval Order.

19 5. This Court now affirms certification of the Settlement Class and gives final  
20 approval to the settlement and finds that the Settlement Agreement is fair, reasonable, adequate,  
21 and in the best interests of the Settlement Class. The complex legal and factual posture of this case,  
22 and the fact that the Settlement Agreement is the result of arms' length negotiations presided over  
23 by a neutral mediator support this finding. The Settlement consideration provided under the  
24 Agreement constitutes fair value given in exchange for the release of the Released Claims against  
25 the Released Parties. The Court finds that the consideration to be paid to members of the  
26 Settlement Class is reasonable, considering the facts and circumstances of the claims and defenses  
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1 asserted in the Action, and the potential risks and likelihood of success of alternatively pursuing  
2 trial on the merits.

3 6. The Class Representative and Class Counsel adequately represented the Settlement  
4 Class for purposes of entering into and implementing the Settlement Agreement. The preliminary  
5 appointment of Jay Edelson, Rafey S. Balabanian, Benjamin H. Richman and Chandler R. Givens  
6 as Class Counsel is hereby confirmed.

7 7. Accordingly, the Settlement Agreement is hereby finally approved in all respects,  
8 and the Parties are hereby directed to perform its terms. Defendants are hereby ordered to  
9 implement and comply with the Settlement Agreement regarding the injunctive relief made  
10 available to the Settlement Class Members. Defendants shall pay the Fee Award and Incentive  
11 Award, as set forth in the accompanying Order Approving Fees and Incentive Award, pursuant to  
12 and in the manner provided by the terms of the Settlement Agreement.

13 8. Other than as set forth in the accompanying Order Approving Fees and Incentive  
14 Award, the Parties shall bear their own costs and attorneys' fees.

15 9. Notice to the Settlement Class has been provided in accordance with the Court's  
16 Preliminary Approval Order, and the substance of and dissemination program for the notice, which  
17 included direct e-mail notice and the creation of a Settlement Website, fully complied with the  
18 requirements of Federal Rule of Civil Procedure 23 and due process, and constituted the best  
19 notice practicable under the circumstances.

20 10. The Court finds that the Defendants properly and timely notified the appropriate  
21 state and federal officials of the Settlement Agreement, pursuant to the Class Action Fairness Act  
22 of 2005 ("CAFA"), 28 U.S.C. § 1715. The Court has reviewed the substance of Defendants' notice  
23 and accompanying materials, and finds that they complied with all applicable requirements of  
24 CAFA.

25 11. Subject to the terms and conditions of the Settlement Agreement, this Court hereby  
26 dismisses the action on the merits and with prejudice.

1           12.     This judgment has been entered without any admission by Defendants of liability or  
2 as to the merits of any of the allegations in Plaintiff's Second Amended Complaint.

3           13.     The Parties and Settlement Class Members are bound by the terms and conditions  
4 of the Agreement. Upon the Effective Date of this settlement, Plaintiffs and each and every  
5 Settlement Class Member shall be deemed to have released, acquitted and forever discharged  
6 Defendants and each of the Released Parties from any and all Released Claims.

7           14.     Upon the Effective Date, the above release of claims and the Settlement Agreement  
8 will be binding on, and have res judicata and preclusive effect in all pending and future lawsuits or  
9 other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members,  
10 Releasing Parties, and their heirs, executors, and administrators, successors, and assigns. All  
11 Settlement Class Members who have not been properly excluded from the Settlement Class shall  
12 be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released  
13 Claim(s) against any of the Released Parties in any court, arbitration, tribunal, forum or  
14 proceeding.

15           15.     Without affecting the finality of this judgment, the Court retains exclusive  
16 jurisdiction of the Settlement, including without limitation, issues concerning its administration  
17 and consummation. The Court also retains exclusive jurisdiction over the Parties to this  
18 Agreement, including Defendants and all Settlement Class Members regarding the Agreement and  
19 this Final Judgment Order. Defendants, Plaintiff, and Settlement Class Members are hereby  
20 deemed to have submitted irrevocably to the exclusive jurisdiction of this Court for any suit,  
21 action, proceeding, or dispute arising out of or relating to the Released Claims, this Order, and the  
22 Agreement, including, but not limited to, the applicability of the Released Claims, this Agreement,  
23 or this Order. Without limiting the generality of the foregoing, any dispute concerning the  
24 Agreement, including, but not limited to, any suit, action, arbitration, or other proceeding by a  
25 Settlement Class Member in which the provisions of the Agreement are asserted as a defense in  
26 whole or in part to any claim or cause of action or otherwise raised as an objection, shall constitute  
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1 a suit, action, or proceeding arising out of or relating to this Order. Solely for purposes of such  
2 suit, action, or proceeding, to the fullest extent possible under applicable law, the Parties hereto  
3 and all Settlement Class Members are hereby deemed to have irrevocably waived and agreed not to  
4 assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject  
5 to the jurisdiction of this Court, or that this Court is, in any way, an improper venue or an  
6 inconvenient forum.

7 16. The Agreement and the proceedings and statements made pursuant to the  
8 Agreement or papers filed relating to the Agreement, and this Order, are not and shall not in any  
9 event be construed as, offered in evidence as, received in evidence as, and/or deemed to be  
10 evidence of a presumption, concession, or an admission of any kind by any of the Parties of (i) the  
11 truth of any fact alleged or the validity of any claim or defense that has been, could have been, or  
12 in the future might be asserted in the Action, any other litigation, court of law or equity,  
13 proceeding, arbitration, tribunal, investigation, government action, administrative proceeding, or  
14 other forum, or (ii) any liability, responsibility, fault, wrongdoing, or otherwise of the Parties.  
15 Defendants have denied and continue to deny the claims asserted by Plaintiff. Nothing contained  
16 herein shall be construed to prevent a Party from offering the Agreement into evidence for the  
17 purposes of enforcement of the Agreement.

18 17. The certification of the Settlement Class shall be binding only with respect to the  
19 settlement of the Action. In the event that the Agreement is terminated pursuant to its terms or the  
20 Court's approval of the Settlement is reversed, vacated, or modified in any material respect by this  
21 or any other court, the certification of the Settlement Class shall be deemed vacated, the Action  
22 shall proceed as if the Settlement Class had never been certified (including Defendants' right to  
23 oppose any subsequent motion for class certification), and no reference to the Settlement Class, the  
24 Agreement, or any documents, communications, or negotiations related in any way thereto shall be  
25 made for any purpose.

26 18. Based upon the Court's finding that there is no just reason for delay of enforcement  
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28



1 or appeal of this Order notwithstanding the Court’s retention of jurisdiction to oversee  
2 implementation and enforcement of the Agreement, the Court directs the Clerk to enter final  
3 judgment.

4  
5 **IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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8 HONORABLE CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE

# **Exhibit E**

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9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 JAMES GROSS, individually and on behalf  
13 of all others similarly situated,

14 *Plaintiff,*

15 v.

16 SYMANTEC CORPORATION, a Delaware  
17 corporation, and PC TOOLS, LTD., an Irish  
18 limited liability company,

19 *Defendants.*

Case No. 3:12-cv-00154-CRB

**[PROPOSED] ORDER AWARDING  
ATTORNEYS' FEES AND INCENTIVE  
AWARD**

Judge: Honorable Charles R. Breyer  
Action Filed: January 10, 2012

1 The Court, having considered Plaintiff's Motion for an Award of Attorneys' Fees and  
2 Incentive Award (the "Motion"), the lack of opposition from Defendants Symantec Corporation  
3 ("Symantec") and PC Tools, Ltd. ("PC Tools") (Plaintiff and the Defendants are collectively  
4 referred to as the "Parties"), any and all objections thereto, and all other relevant factors, hereby  
5 makes the following findings of fact and conclusions of law:

6 **FINDINGS OF FACT**

7 Pursuant to Rules 23(h)(3) and 52(a) of the Federal Rules of Civil Procedure, the Court  
8 makes the following findings of fact:

9 1. On [date], 2013, the Parties entered into a Stipulation of Class Action Settlement  
10 (the "Agreement").

11 2. Unless otherwise defined herein, all capitalized terms in this Order shall have the  
12 respective meanings ascribed to them in the Parties' Agreement.

13 3. On [date], 2013, the Court entered an Order preliminarily approving the Parties'  
14 settlement ("Preliminary Approval Order"), directing that Notice be provided to the Settlement  
15 Class, scheduling a Fairness Hearing to determine whether to finally approve the settlement, to  
16 finally certify the Settlement Class, and to award attorneys' fees, expenses and/or an incentive  
17 award, and to consider any objections properly and timely presented. (Dkt. xx.)

18 4. In the Court's Preliminary Approval Order, the Court appointed Plaintiff's counsel,  
19 Jay Edelson, Rafey S. Balabanian, Benjamin H. Richman and Chandler R. Givens, all of Edelson  
20 McGuire LLC, to serve as Class Counsel on behalf of the Settlement Class. (*Id.*)

21 5. Notice has been provided to the Settlement Class in accordance with the  
22 Preliminary Approval Order, disclosing the maximum amount that Class Counsel would seek in a  
23 Fee Award and an incentive award to Plaintiff as Class Representative.

24 6. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, any  
25 objections to Class Counsel's petition for a Fee Award and incentive award were to be filed and  
26 served by [date], 2013.

1           7.       The Court held a Fairness Hearing on [date], 2013, at which all interested persons  
2 were given the opportunity to be heard. The Court heard and considered all submissions in  
3 connection with Class Counsel's request for a Fee Award and incentive award, and the proposed  
4 Settlement, including the arguments of counsel and any timely filed valid objections.

5           8.       There, the Court found that the settlement was negotiated at arms-length, with the  
6 assistance of a well-respected third-party mediator, by experienced counsel who did not put their  
7 interests ahead of the Settlement Class, as evidenced by the fact that all Settlement Benefits to the  
8 Settlement Class were agreed upon prior to the Parties' negotiations regarding a Fee Award to  
9 Class Counsel and an incentive award to Plaintiff as Class Representative. Thus, the Court finds  
10 that the Agreement was reached in good faith, is in the best interests of the Settlement Class, and is  
11 free of any collusion or other improper motive.

12           9.       Accordingly, the Court entered a Final Judgment Order on [date], 2013, fully and  
13 finally approving the Parties' settlement as fair, reasonable and adequate, finally certifying the  
14 Settlement Class, and forever releasing the Released Parties as to the Released Claims.

15           10.      Class Counsel has expended substantial time and effort in their prosecution of the  
16 claims at issue in this Action on behalf of Plaintiff and the Settlement Class.

17           11.      Plaintiff is entitled to reasonable attorneys' fees in the amount of [xx]% of the  
18 \$11,000,000 Settlement Fund, or \$[amount], which amount includes Plaintiff's reasonable  
19 expenses incurred by Class Counsel in the Action. Plaintiff's request for a Fee Award is reasonable  
20 under both the "common fund" percentage of recovery analysis and under the lodestar cross-check  
21 method, given that: (a) the requested fee represents [xx]% of the Settlement Fund, which is below  
22 the 25% benchmark "common fund" award in the Ninth Circuit; (b) the number of hours that Class  
23 Counsel devoted to the Action is reasonable; (c) Class Counsel's hourly rates are reasonable and  
24 have previously been approved by other courts throughout the country; and (d) Plaintiff's request  
25 for a Fee Award is reasonable considering the time and labor required of Class Counsel, the risks  
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1 that they would recover nothing, the novelty and complexity of the claims at issue, Class Counsel's  
2 skill and experience, and the results obtained through the settlement.

3 12. Plaintiff initiated the Action, acted to protect the interests of the Settlement Class,  
4 and assisted Class Counsel, which efforts have resulted in an Agreement entered into in good faith  
5 that provides a fair, reasonable, adequate and certain result for the Settlement Class.

6 13. Thus, Plaintiff as Class Representative, is entitled to an incentive award for his time  
7 and efforts in these proceedings in the amount of \$[amount].

### 8 **CONCLUSIONS OF LAW**

9 Pursuant to Rules 23(h)(3) and 52(a) of the Federal Rules of Civil Procedure, the Court  
10 makes the following conclusions of law:

11 14. Rule 23 of the Federal Rules of Civil Procedure provides that, "[i]n a certified class  
12 action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by  
13 law or by the parties' agreement." Fed. R. Civ. P. 23(h).

14 15. In awarding attorneys' fees and costs under Rule 23(h), the Court may hold a  
15 hearing and must make findings of fact and state its legal conclusions. *See* Fed. R. Civ. P. 23(h)(3).

16 16. In "common fund" cases, such as this, the Court has the discretion to award a  
17 plaintiff's attorneys' fees as either a percentage of the common fund, or by using the lodestar  
18 method. *See In re Bluetooth*, 654 F.3d 935, 942 (9th Cir. 2011) (citing *In re Mercury Interactive*  
19 *Corp.*, 618 F.3d at 992); *see also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378-79 (N.D.  
20 Cal. 1989)

21 17. In the Ninth Circuit, the "benchmark" award in common fund cases is 25% of the  
22 recovery obtained. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

23 18. The Court may also apply the lodestar method to determine a reasonable attorneys'  
24 fee award by multiplying the number of hours reasonably expended by a reasonable hourly rate.  
25 *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The fee amount calculated under the lodestar  
26 method is presumptively reasonable. *Id.* In common fund cases, the lodestar method may also be  
27  
28

used as a cross-check of the percentage of recovery method. *See In re Bluetooth*, 654 F.3d at 942. Counsel's total lodestar amount may include work performed by litigation support staff as well. *See Mogck v. Unum Life Ins. Co. of Am.*, 289 F. Supp. 2d 1181, 1190-91, 1194 (S.D. Cal. 2003) (granting attorneys' fees under lodestar/multiplier approach for attorney, paralegal and secretarial staff hours) (citing *D'Emanuele v. Montgomery Ward & Co.*, 904 F.2d 1379, 1387 (9th Cir. 1990)).

19. In deciding an appropriate attorneys' fee award under the lodestar method, courts should consider a number of factors, including *inter alia*, the time and labor required of counsel, the novelty and complexity of the litigation, the skill and experience of counsel, the contingent nature of the case, and the results obtained. *See Blum v. Stenson*, 465 U.S. 866, 898-900 (1984); *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

20. Further, incentive awards are also typical in class action cases. *Rodriguez v. West Publ'g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Although the amounts of incentive awards granted by courts vary, it is not uncommon for a court to award a class representative several thousand dollars. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir. 2000) (approving incentive award of \$5,000); *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 253 (D.N.J. 2009) (approving incentive award of \$10,000).

### **ORDER**

Now, therefore, good cause appearing, it is HEREBY ORDERED, ADJUDGED, AND DECREED:

21. This Court has jurisdiction over the subject matter of Plaintiff's application for a Fee Award and incentive award, and all matters relating thereto.

22. Due and adequate notice of the maximum Fee Award and incentive award that Class Counsel would request was directed to all persons who were reasonably identifiable Settlement Class Members, advising them of their right to object thereto or request exclusion from the settlement.

25. All such payments are to be made in accordance with the terms of the Agreement.

HONORABLE CHARLES R. BREYER  
UNITED STATES DISTRICT JUDGE



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8 **UNITED STATES DISTRICT COURT**  
9 **NORTHERN DISTRICT OF CALIFORNIA**  
10 **SAN FRANCISCO DIVISION**

11  
12 JAMES GROSS, individually and on behalf of  
all others similarly situated,

13 *Plaintiff,*

14 v.

15 SYMANTEC CORPORATION, a Delaware  
16 corporation, and PC TOOLS, LTD., an Irish  
limited liability company,

17 *Defendants.*

Case No. 3:12-cv-00154-CRB

**ADDENDUM TO STIPULATION OF CLASS  
ACTION SETTLEMENT**

Judge: Honorable Charles R. Breyer  
Action Filed: January 10, 2012

1 This Addendum to Stipulation of Class Action Settlement (the “Addendum”) is entered by  
 2 and among Plaintiff James Gross (“Gross” or “Plaintiff”) for himself individually and on behalf of  
 3 the Settlement Class, and Defendants Symantec Corporation (“Symantec”) and PC Tools, Ltd.  
 4 (“PC Tools”) (collectively, “Defendants”) (Plaintiff and Defendants are collectively referred to  
 5 herein as the “Parties”).<sup>1</sup> The provisions of this Addendum shall be deemed a part of and shall  
 6 supersede any conflicting or inconsistent provisions contained in the Settlement Agreement.  
 7 Except as expressly modified by this Addendum, all provisions of the Settlement Agreement shall  
 8 remain unmodified and in full force and effect.

9 WHEREAS, a hearing on Plaintiff’s motion for preliminary approval of the Settlement  
 10 Agreement was held before the Court on April 19, 2013, at which the Court held that it would not  
 11 grant preliminary approval of the Settlement Agreement unless it were amended to grant the Court  
 12 discretion to designate for cy pres distribution a portion of the Settlement Fund equal to or less  
 13 than the difference between the actual Fee Award granted by the Court and the maximum  
 14 allowable Fee Award set forth in the Agreement, to the extent the Court does not grant the  
 15 maximum allowable Fee Award to Class Counsel;

16 NOW THEREFORE, the Parties hereby stipulate and agree that the Settlement Agreement  
 17 is amended as follows:

18 **I. AMENDMENT TO SECTION XI OF THE AGREEMENT**

19 The following shall be inserted as Section XI.C of the Agreement:

20 **C. The Potential Cy Pres Component.** If the Court approves a Fee Award that is less  
 21 than the maximum amount set forth in Section XI.B, the Court shall have discretion to designate  
 22 for cy pres distribution a portion of the Settlement Fund equal to or less than the difference  
 23 between the actual Fee Award and the maximum allowable Fee Award set forth in Section XI.B.  
 24 No later than the date fourteen (14) days prior to the date for Settlement Class Members to  
 25 comment in support of or in opposition to the Settlement, the Parties shall jointly submit to the

26 \_\_\_\_\_  
 27 <sup>1</sup> Except as otherwise specified, defined terms shall have the meanings set forth in the  
 28 Agreement.

1 Court a list of proposed recipients of any potential cy pres distribution, including any proposals for  
 2 allocation among cy pres recipients. Defendants shall make any cy pres distributions designated  
 3 by the Court within thirty (30) days after the Effective Date. The Court's exercise of its discretion  
 4 to designate some, all, or no portion of the maximum allowable Fee Award for cy pres distribution  
 5 shall not prevent the Agreement from becoming effective, nor shall it be grounds for termination.  
 6 In making reports or public statements regarding its charitable contributions, Symantec may  
 7 include in its totals any amounts distributed to cy pres recipients under the Agreement, and is not  
 8 obligated to specifically make reference to the Action, the Agreement, or the context in which  
 9 those distributions were made, when making such statements.

## 10 **II. AMENDMENTS TO THE EXHIBITS TO THE AGREEMENT**

11 Exhibits A, C, D, and E to the Agreement shall be stricken and replaced by the attached  
 12 amended Exhibits A, C, D, and E.

13 \* \* \*

14 IN WITNESS WHEREOF, each of the Parties hereto has caused this Addendum to be  
 15 executed on its behalf by its duly authorized representative or counsel of record, all as of the day  
 16 set forth below.

17  
 18 **JAMES GROSS**, individually and on behalf of all  
 others similarly situated,

19 Dated: 5/20/13

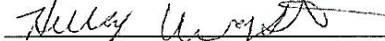
By (signature): 

20 Name (printed): Rafay S. Balabanian

21 His (title): Attorney

22  
 23 **SYMANTEC CORP.**,

24 Dated: 5/14/2013

By (signature): 

25 Name (printed): Hilary Weingast

26 Its (title): Vice President, Legal

PC TOOLS, LTD.

1  
2 Dated: May 16, 2012

By (signature): C. M. Osuni

3 Name (printed): NORMAN M. OSUNI

4 Its (title): SENIOR DIRECTOR

# Exhibit A

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT***Gross v. Symantec Corp., et al.***Case No. 3:12-cv-00154-CRB (U.S. District Court for the Northern District of California)**

**If you purchased certain Software Products described below  
between June 1, 2007 and [date of preliminary approval],  
you may be part of a class action settlement.**

**IMPORTANT****PLEASE READ THIS NOTICE CAREFULLY**

**THIS NOTICE RELATES TO THE PENDENCY OF A CLASS ACTION LAWSUIT  
AND IF YOU ARE A SETTLEMENT CLASS MEMBER, CONTAINS  
IMPORTANT INFORMATION ABOUT YOUR RIGHTS TO MAKE A CLAIM UNDER THE  
SETTLEMENT OR TO OBJECT TO THE SETTLEMENT**

*(A federal court authorized this notice. It is not a solicitation from a lawyer.)*

Your legal rights are affected whether or not you act. Please read this notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM POSTMARKED OR COMPLETED ONLINE BY [DATE]</b>	The only way to receive a cash Settlement Benefit.
<b>EXCLUDE YOURSELF FROM THE CLASS BY [DATE]</b>	Receive no Settlement Benefit. This is the only option that allows you to pursue claims alleged in the Action against the Defendants by filing your own lawsuit at your own expense.
<b>COMMENT BY [DATE]</b>	Write to the Court about why you do, or do not, like the Settlement. You must remain in the Settlement Class to comment in support of or in opposition to the Settlement.
<b>ATTEND A HEARING ON [DATE]</b>	Ask to speak to the Court about the fairness of the Settlement. <i>(The date and time of the final Fairness Hearing is subject to change by Court Order. See Section 10 below.)</i>
<b>DO NOTHING</b>	Receive only non-cash Settlement Benefits (free software and injunctive relief) and give up your right to sue.

- These rights and options, and the deadlines to exercise them, are explained in this notice.
- The Court overseeing this case still has to decide whether to approve the Settlement. Payments and other Settlement Benefits will be provided if the Court approves the Settlement and after any appeals are resolved.



## 1. What is this notice and why should I read it?

This notice is to inform you of the settlement of a class action lawsuit in the case captioned *Gross v. Symantec Corp., et al.*, Case No. 3:12-cv-00154-CRB (the “Action”), brought on behalf of the Settlement Class, and pending in the United States District Court for the Northern District of California. You need not live in California to get a benefit under the Settlement, but you must live in the United States and its territories. The Court has granted preliminary approval of the Settlement and has set a final hearing to take place on [date] at [time] at the Phillip Burton Federal Building and United States Courthouse, located at 450 Golden Gate Avenue, San Francisco, California, 94102, in Courtroom [6, 17th Floor] to determine if the Settlement is fair, reasonable and adequate, to consider the request by Class Counsel for attorneys’ fees, expenses, and an incentive award for the Class Representative, and to consider whether a portion of the maximum allowable Fee Award to Class Counsel should be designated for distribution to one or more charitable organizations, and in what amount. This notice describes the Settlement. Please read this notice carefully to determine whether you wish to participate in the Settlement. Your rights and options—and the deadlines to exercise them—are explained in this notice. Your legal rights are affected regardless of whether you act.

## 2. What is a class action lawsuit and what is this lawsuit about?

A class action is a lawsuit in which one or more plaintiffs—in this case, Plaintiff James Gross (“Plaintiff”)—sue on behalf of themselves and other people who allegedly have similar claims. Here, Plaintiff filed a class action complaint against Defendants Symantec Corp. (“Symantec”) and PC Tools, Ltd. (“PC Tools”) in the Northern District of California on behalf of people who purchased certain of Defendants’ Software Products—PC Tools Registry Mechanic, PC Tools Performance Toolkit, and Norton Utilities—alleging that the Software Products did not perform certain functions as advertised. A more complete description of the allegations is set forth in the Second Amended Complaint, which is available on the Settlement Website at [URL].

Although Symantec and PC Tools deny Plaintiff’s claims of wrongdoing, the Parties have agreed to settle all claims against Defendants by entering into a written settlement agreement entitled “Stipulation of Class Action Settlement” (the “Agreement”). The individuals on whose behalf the Settlement has been made are called “Settlement Class Members.” The individuals who make up the Settlement Class (i.e., the Settlement Class Members) are described in Section 4 below.

The Agreement has already been preliminarily approved by the Court. Nevertheless, because the settlement of a class action determines the rights of all members of the proposed class, the Court has ordered this notice to be disseminated to the Settlement Class and is required to hold a Fairness Hearing to determine whether final approval may be granted to the Settlement, before it can take effect.

The Court has conditionally certified the Settlement Class for settlement purposes, so that Settlement Class Members can be given this notice and the opportunity to exclude themselves

from the Settlement Class, voice their support or opposition to the Settlement, and explain how those who do not exclude themselves from the Settlement Class may submit a Claim Form to get the monetary benefit offered by the Settlement. If the Settlement is not granted final approval by the Court, or the Parties terminate it, the Settlement will be void, and the lawsuit will continue as if there had been no settlement and no certification of the Settlement Class.

### **3. Why is there a settlement?**

The Court has not decided in favor of either side in the case. The Defendants deny all allegations of wrongdoing or liability against them and assert that their conduct was lawful. The Defendants are settling to avoid the expense, inconvenience, and inherent risk and disruption of litigation. Plaintiff and his attorneys believe that the settlement is in the best interests of the Settlement Class because it provides an appropriate recovery for Settlement Class Members now while avoiding the risk, expense, and delay of pursuing the case through trial and any appeals.

### **4. Who is included in the Settlement?**

The Settlement Class includes all individuals and entities residing in the United States and its territories that, prior to [date of preliminary approval], purchased from an authorized seller a license to use any of the following software in the United States and its territories: PC Tools Registry Mechanic and PC Tools Performance Toolkit released since June 1, 2007, and Norton Utilities 14.0 through 16.0.

### **5. What does the Settlement provide?**

#### **A. Monetary Relief and Free Software.**

**i. Payments.** Defendants have agreed to create an \$11,000,000.00 Settlement Fund from which they will make a one-time check payment of nine dollars (\$9.00) to each Settlement Class Member who submits a valid Claim Form in accordance with the procedure set forth below if they have purchased Software Product(s) for which they have not already received a full refund. In addition, Defendants have agreed to pay from the Settlement Fund Class Counsel's attorneys' fees and costs not to exceed \$1,650,000.00 (and any difference between the amount of attorneys' fees awarded by the Court and \$1,650,000.00 to appropriate charitable organizations), an incentive award to the Class Representative totaling \$2,500.00, and the full administrative costs of the Settlement up to \$150,000.00, and half of any additional administrative costs thereafter.

If you are a member of the Settlement Class (defined in the answer to Question No. 4 above), and you choose to stay in the Settlement Class, you can submit a Claim Form to receive a check payment.

**ii. Antivirus Software.** Each Settlement Class Member shall also receive three (3) months of free access to Symantec's proprietary antivirus software known as



Norton Antivirus, regardless of whether they submit a Claim Form or have already received a full refund of the money paid to purchase a Software Product.

**iii. Process.** To be eligible for a check payment under the Settlement, a Settlement Class Member must affirm in the Claim Form: (1) that he, she or it purchased one or more of the Software Products, and (2) that he, she or it did not previously receive a full refund of all monies paid for the Software Product(s).

You can download a Claim Form from the Settlement Website by going to [URL] and following the instructions provided there. You can also obtain a Claim Form by writing to the Settlement Administrator at [address] or calling toll-free [phone number]. Your Claim Form must be postmarked or electronically submitted by [date].

**B. Prospective Relief.** As part of the Settlement, the Defendants have agreed that, as soon as practicable, but no later than ninety (90) days from the Effective Date of the Agreement, they will modify the current versions of the respective Software Products to: (i) deactivate the “System Health” meter within the main Graphical User Interface (“GUI”) such that a user’s System health is reported as “unknown” until after the individual performs a scan with the Software Product to assess the registry and other monitored areas for invalid entries and other uses; (ii) refrain from claiming in the GUI prompt presented to users when upgrading from the trial version to the full version of the Software Products that upgrading will increase the “speed” of the user’s computer or will cause the computer to run “faster”; (iii) no longer include representations within the Software Products that any specific errors require “immediate repair”; (iv) no longer describe invalid registry entries as “errors”; and (v) within the Software Products’ GUI “Help” section, include documentation that clearly explains the detection and reporting methodologies underlying the operations of the respective Software Products’ diagnostic scan.

Defendants have also agreed to develop and publish new documentation that explains, in a clear and concise manner, the meaning of the “System Health” meter and the factors considered in determining a computer’s “System Health” as well as describes the potential harm posed by the issues detected, including what is meant by a “High Priority” issue.

## 6. Who represents the Settlement Class?

**A. Class Representative.** For purposes of the Settlement, the Court has appointed Plaintiff James Gross to serve as the Class Representative.

**B. Settlement Class Counsel.** The Court has approved the appointment of Jay Edelson, Rafey S. Balabanian, Benjamin H. Richman and Chandler R. Givens of Edelson LLC as Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

From the beginning of the case in January 2012 to the present, Class Counsel have not received any payment for their services in prosecuting the case or obtaining the Settlement, nor have they been reimbursed for any out-of-pocket expenses they have incurred. Class Counsel will apply to the Court for an award of attorneys’ fees and actual expenses (including their court costs) in a

total amount not to exceed \$1,650,000.00. The Defendants have agreed not to oppose Class Counsel's application for an award of attorneys' fees and reimbursable expenses up to \$1,650,000.00. If the Court approves the attorneys' fee application, the award will be paid by Defendants. The Settlement Class Members will not have to pay anything toward the fees or expenses of Class Counsel. Class Counsel will seek final approval of the Settlement on behalf of all Settlement Class Members. You may hire your own lawyer to represent you in this case if you wish, but it will be at your own expense.

In the event that the Court does not award the full \$1,650,000.00 in attorneys' fees, it will determine whether the difference between the amount actually awarded and \$1,650,000.00 (or a portion of the difference) should be distributed to charitable organizations that will be proposed to the Court by the Parties, and in what amount.

#### **7. How can I exclude myself from the Settlement Class?**

You can get out of the Settlement Class by "excluding" yourself. If you exclude yourself, you won't be able to submit a Claim Form, and you won't be allowed to claim any of the relief offered by the Settlement. If you exclude yourself from the Settlement Class, you can pursue whatever legal rights you may have in any separate proceeding if you choose to do so, but you will have to do so at your own expense.

To exclude yourself from the Settlement Class, you must send a letter saying that you want to be excluded from the Settlement Class in *Gross v. Symantec Corp., et al.* Your Request for Exclusion must include your name, address and telephone number, identify the email address you believe was used to purchase, register or activate the Software Products you purchased, and be physically signed with a statement to the effect that: "I/We hereby request to be excluded from the proposed Settlement Class in *Gross v. Symantec Corp., et al.*" **Your Request for Exclusion must be postmarked no later than [date], and sent to the Settlement Administrator at the following address: [insert address].**

A Request for Exclusion that does not include all of the above information, that is sent to an address other than the one listed above, or that is not received on time, will not be valid and the person(s) asking to be excluded will be considered a member of the Settlement Class, and will be bound as a Settlement Class Member.

**If you elect to exclude yourself, you will (i) not have any rights as a member of the Settlement Class pursuant to the Agreement, (ii) not be able to receive any Settlement Benefit as provided in the Agreement, (iii) not be bound by any further orders or judgments in this case, and (iv) not be entitled to object to any aspect of the Agreement. If you proceed on an individual basis, you might receive more, or less, of a benefit than you would otherwise receive under the Agreement, or no benefit at all.**

## 8. How can I tell the Court what I think about the Settlement?

If you do not exclude yourself from the Settlement Class, you or your attorney can comment in support of or in opposition to the Settlement and have the right to appear before the Court to do so. Your objection to or comment on the Settlement must be submitted in writing by [date] and must be sent to the Court and the attorneys for the Parties at the addresses below:

### Clerk of the Court

Clerk of the Court  
U.S. Dist. Ct., N.D. Cal.  
450 Golden Gate Avenue  
San Francisco, CA 94102

### Settlement Class Counsel

Jay Edelson  
Rafey S. Balabanian  
Benjamin H. Richman  
Chandler R. Givens  
Edelson LLC  
350 N. LaSalle, Suite 1300  
Chicago, IL 60654

### Defendants' Counsel

Maura L. Rees  
Anthony J Weibell  
Wilson Sonsini Goodrich & Rosati  
Professional Corporation  
650 Page Mill Road  
Palo Alto, California 94304-1050

The objection or comment must be in writing and include the case name *Gross v. Symantec Corp., et al.*, Case No. 3:12-cv-00154-CRB, and: (a) the Settlement Class Member's full name and current address; (b) the email address the Settlement Class Member believes was used to purchase, register or activate the Software Product(s) purchased by the Settlement Class Member; (c) a signed declaration that he or she believes himself or herself to be a member of the Settlement Class; (d) the specific grounds for the objection; (e) all documents or writings that the Settlement Class Member desires the Court to consider; and (f) a notice of intention to appear at the Fairness Hearing (if any). The Court will consider all properly filed comments from Settlement Class Members.

If you do not submit a written comment on the Settlement or the application of Class Counsel for an incentive award and attorneys' fees and expenses in accordance with the deadline and procedure set forth above, and you are not granted relief by the Court, you will waive your right to be heard at the Fairness Hearing.

If you do not object as described in this notice, and you do not exclude yourself from the Settlement Class, you will be deemed to have consented to the Court's certification of, and jurisdiction over, the Settlement Class, and, if the Settlement is granted final approval, to have released the Released Claims (defined in the Agreement, available at [URL]).

## 9. What is the effect of final approval of the Settlement?

If the Court grants final approval to the Settlement, the Court will enter a final order and judgment and dismiss the case as to the Defendants. Claim Forms and payments under the Settlement will then be processed, claims payments will be distributed, and access to the free antivirus software will be distributed. The release by Settlement Class Members will also take effect. All members of the Settlement Class will release, acquit and forever discharge the



Defendants and each of the Released Parties from any and all Released Claims (as defined in the Agreement). Please refer to Section V of the Agreement for a full description of the claims and persons that will be released upon final approval of the Settlement.

Whether you consider the Settlement favorable or unfavorable, any and all members of the Settlement Class who do not exclude themselves from the Settlement Class will not be permitted to continue to assert Released Claims in any other litigation against the Defendants or other persons and entities covered by the Release. You can obtain a copy of the Agreement from the Clerk of the Court, online at [Settlement Website URL], or by writing to the Settlement Administrator at [address]. If you do not wish to be a Settlement Class Member, you must exclude yourself from the Settlement Class (see No. 7, above).

If the Settlement is not approved, the case will proceed as if no settlement had been attempted or reached. There can be no assurance that if the Settlement is not approved and the case resumes, the Settlement Class will recover more than is provided for under the Agreement, or will recover anything at all.

#### **10. When and where will the Court hold a hearing on the fairness of the Settlement?**

A Fairness Hearing has been set for [date] at [time], before The Honorable Charles R. Breyer at the Phillip Burton Federal Building and United States Courthouse, located at 450 Golden Gate Avenue, San Francisco, California, 94102, in Courtroom [6, 17th Floor]. At the hearing, the Court will hear any comments, objections, and arguments concerning the fairness of the proposed Settlement, including the amount requested by Class Counsel for attorneys' fees and expenses. You do not need to attend this hearing. You also do not need to attend to have a comment or objection considered by the Court.

**Note:** The date and time of the Fairness Hearing are subject to change by Court Order.

#### **11. Do I have to come to the Fairness Hearing? May I speak at the hearing?**

You do not need to attend the Fairness Hearing to remain a Settlement Class Member or submit a Claim Form. You or your own lawyer may attend the hearing if you wish, at your own expense.

If you do not exclude yourself from the Settlement Class, you may ask the Court for permission to speak at the hearing concerning the proposed Settlement or the application of Class Counsel for attorneys' fees and expenses by following the instructions in No. 8 above.

#### **12. How do I receive the Settlement Benefits?**

If you do not exclude yourself from the Settlement Class, and would like to receive the monetary benefit provided by the Settlement, you must submit a timely and valid Claim Form as set forth in No. 5 above. **Claim Forms must be submitted online or by mail postmarked by [date].** You can submit an electronic Claim Form online at [URL], or obtain a copy of the Claim Form

by downloading it from [URL] or by writing to the Settlement Administrator at: [address] or calling toll-free [phone number].

### **13. What happens if I do nothing at all?**

If you do nothing, you will receive no payment under the Settlement, but you will receive three (3) months of free access to Norton Antivirus. You will also still be part of the Settlement Class and subject to the Release described in Section V of the Agreement. This means you will not be permitted to continue to assert Released Claims in any other case against Defendants or other persons and entities covered by the Release. Please refer to Section V of the Agreement for a full description of the claims and persons who will be released upon final approval of the Settlement.

### **14. Where can I get additional information?**

This notice provides only a summary of the matters relating to the Settlement. For more detailed information, you may wish to review the Agreement. You can view the Agreement and get more information at [URL]. You can also get more information by writing to the Settlement Administrator at [address] or calling toll-free [number]. The Agreement and all other pleadings and papers filed in the case are available for inspection and copying during regular business hours at the office of the Clerk of the United States District Court for the Northern District of California (San Francisco Division), at the Phillip Burton Federal Building and United States Courthouse, 450 Golden Gate Avenue, San Francisco, California 94102.

If you would like additional information, you can also write to Class Counsel at the address listed in No. 8 above.

**PLEASE DO NOT CONTACT THE COURT, THE JUDGE, OR THE DEFENDANTS WITH  
QUESTIONS ABOUT THE SETTLEMENT.**

# Exhibit C

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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

13 JAMES GROSS, individually and on behalf of  
14 all others similarly situated,

15 *Plaintiff,*

16 v.

17 SYMANTEC CORPORATION, a Delaware  
18 corporation, and PC TOOLS, LTD., an Irish  
19 limited liability company,

20 *Defendants.*

Case No. 3:12-cv-00154-CRB

**[PROPOSED] PRELIMINARY APPROVAL  
ORDER**

Judge: Honorable Charles R. Breyer  
Action Filed: January 10, 2012

1 This matter having come before the Court on Plaintiff's motion for preliminary approval  
 2 (the "Motion for Preliminary Approval") of a proposed class action settlement of the above-  
 3 captioned action (the "Action") between Plaintiff James Gross and Defendants Symantec Corp.  
 4 and PC Tools, Ltd. (collectively, "Defendants"), pursuant to the Parties' Stipulation of Class  
 5 Action Settlement (the "Agreement") and the Addendum to Stipulation of Class Action Settlement  
 6 (the "Addendum"), and having duly considered the papers and arguments of counsel, the Court  
 7 hereby finds and orders as follows:

8 1. Unless defined herein, all defined terms in this Order shall have the respective  
 9 meanings set forth in the Agreement.

10 2. The Court has conducted a preliminary evaluation of the Settlement set forth in the  
 11 Agreement for fairness, adequacy, and reasonableness. Based on this preliminary evaluation, the  
 12 Court finds that (i) there is cause to believe that the Settlement is fair, reasonable, and adequate,  
 13 and within the range of possible approval, (ii) the Settlement has been negotiated in good faith at  
 14 arms-length between experienced attorneys familiar with the legal and factual issues of this case,  
 15 and (iii) the notice of the material terms of the Settlement to Settlement Class Members for their  
 16 consideration and reaction is warranted. Therefore, the Court grants preliminary approval of the  
 17 Settlement.

18 3. Pursuant to Federal Rule of Civil Procedure 23(b)(2) and (b)(3), and for settlement  
 19 purposes only, the Court conditionally certifies the proposed Settlement Class, consisting of:

20 All individuals and entities residing in the United States and its territories that, prior  
 21 to the date of this Order, purchased from an authorized seller a license to use any of  
 22 the following software in the United States and its territories: PC Tools Registry  
 Mechanic and PC Tools Performance Toolkit released since June 1, 2007, and  
 Norton Utilities 14.0 through 16.0.

23 4. For settlement purposes only, the Court hereby preliminarily approves the  
 24 appointment of Plaintiff James Gross as Class Representative.

25 5. For settlement purposes only, the Court hereby preliminarily approves the  
 26 appointment of Jay Edelson, Rafey S. Balabanian, Benjamin H. Richman, and Chandler R. Givens  
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1 of Edelson LLC, as Class Counsel.

2           6.       On [date] at [time] or at such other date and time later set by Court Order, this  
3 Court will hold a Fairness Hearing on the fairness, adequacy, and reasonableness of the Settlement  
4 and to determine whether (i) final approval of the Settlement should be granted, (ii) Class  
5 Counsel's application for attorneys' fees and expenses, and an incentive award to Plaintiff, should  
6 be granted, and in what amount, and (iii) a portion of the maximum allowable Fee Award should  
7 be designated for cy pres distribution, and in what amount. No later than the date fourteen (14)  
8 days prior to the date for Settlement Class Members to comment in support of or in opposition to  
9 the Settlement (as set forth below), Plaintiff shall file his papers in support of Class Counsel's  
10 application for attorneys' fees and expenses, and an incentive award to him as Class  
11 Representative. No later than the date fourteen (14) days prior to the date for Settlement Class  
12 Members to comment in support of or in opposition to the Settlement, the Parties shall jointly  
13 submit to the Court a list of proposed recipients of any potential cy pres distribution, including any  
14 proposals for allocation among cy pres recipients. No later than the date twenty-eight (28) days  
15 prior to the Fairness Hearing, Plaintiff must file his papers in support of final approval of the  
16 Settlement and in response to any objections. Defendants may (but are not required to) file papers  
17 in support of final approval of the Settlement, so long as they do so no later than the date twenty-  
18 eight (28) days prior to the Fairness Hearing.

19           7.       Pursuant to the Agreement, Epiq Systems is hereby appointed as Settlement  
20 Administrator and shall be required to perform all the duties of the Settlement Administrator as set  
21 forth in the Agreement and this Order. To aid in the efficient submission of Claim Forms, the  
22 Agreement provides for Settlement Class Members to submit Claim Forms online without the need  
23 for a manual signature. However, by submitting an online Claim Form, such Settlement Class  
24 Members shall be bound to the same extent as if they had used a manual signature.

25           8.       The Court approves the proposed Notice Plan for giving direct notice to the  
26 Settlement Class by e-mail and establishing a Settlement Website, as more fully described in the  
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1 Agreement. The Notice Plan, in form, method, and content, complies with the requirements of  
 2 Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The  
 3 Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the  
 4 Notice Plan no later than twenty-eight (28) days following the entry of this Preliminary Approval  
 5 Order and in accordance with the terms of the Agreement.

6 9. All persons who meet the definition of the Settlement Class and who wish to  
 7 exclude themselves from the Settlement Class must submit their Request for Exclusion in writing,  
 8 identifying the case name *Gross v. Symantec Corp., et al.*, and state the name, address and  
 9 telephone number of the Settlement Class Member(s) seeking exclusion as well as the email  
 10 address the Settlement Class Member(s) believes was used to purchase, register or activate the  
 11 Software Products purchased. Each Request for Exclusion must also be physically signed with a  
 12 statement to the effect that: "I/We hereby request to be excluded from the proposed Settlement  
 13 Class in *Gross v. Symantec Corp., et al.*" The request must be mailed to the Settlement  
 14 Administrator at the address provided in the notice and postmarked no later than sixty (60) days  
 15 following the date that the Settlement Class Notice is first disseminated to the Settlement Class. A  
 16 Request for Exclusion that does not include all of the foregoing information, that is sent to an  
 17 address other than the one designated in the notice, or that is not received within the time specified,  
 18 shall be invalid and any person(s) serving such a request shall be deemed a member of the  
 19 Settlement Class, and shall be bound as a Settlement Class Member(s) by the Settlement. The  
 20 Settlement Administrator shall promptly forward copies of all Requests for Exclusion to Class  
 21 Counsel and Defendants' Counsel.

22 10. Any member of the Settlement Class may comment in support of or in opposition to  
 23 the Settlement; *provided, however*, that all comments and objections must be filed with the Court  
 24 and received by Class Counsel and Defendants' Counsel prior to the Fairness Hearing. A  
 25 Settlement Class Member who objects to the Settlement need not appear at the Fairness Hearing  
 26 for his, her or its comment to be considered by the Court; however, all papers, briefs, pleadings, or  
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other documents that any objector would like the Court to consider (“Objections”) must be filed with the Court, with a copy postmarked to Class Counsel and Defendants’ Counsel, no later than sixty (60) days following the date that the Settlement Class Notice is first disseminated to the Settlement Class. All Objections shall include the caption *Gross v. Symantec Corp., et al.*, No. 3:12-cv-00154-CRB, and provide: (i) the Settlement Class Member’s full name and current address; (ii) the email address the Settlement Class Member believes was used to purchase, register or activate the Software Products purchased, (iii) a signed declaration that he or she believes himself or herself to be a member of the Settlement Class; (iv) the specific grounds for the objection; (v) all documents or writings that such Settlement Class Member desires the Court to consider; and (vi) a notice of intention to appear at the Fairness Hearing (if any).

11. Any Settlement Class Member who fails to object in the manner prescribed herein shall be deemed to have waived his, her or its objections and forever be barred from making any such objections in this Action or in any other action or proceeding. While the declaration described in subparagraph 10(iii) is *prima facie* evidence that the objector is a member of the Settlement Class, Plaintiff or Defendants or both may take discovery regarding the matter, subject to Court approval. If a Settlement Class Member does not submit a written comment on the proposed Settlement or the application of Class Counsel for an incentive award and attorneys’ fees and expenses in accordance with the deadline and procedure set forth in the notice, and the Settlement Class Member is not granted relief by the Court, the Settlement Class Member will be deemed to have waived his, her or its right to be heard at the Fairness Hearing.

12. The Agreement and the proceedings and statements made pursuant to the Agreement or papers filed relating to the approval of the Agreement, and this Order, are not and shall not in any event be construed as, offered in evidence as, received in evidence as, and/or deemed to be evidence of a presumption, concession, or an admission of any kind by any of the Parties of (i) the truth of any fact alleged or the validity of any claim or defense that has been, could have been, or in the future might be asserted in the Action, any other litigation, court of law

1 or equity, proceeding, arbitration, tribunal, investigation, government action, administrative  
2 proceeding, or other forum, or (ii) any liability, responsibility, fault, wrongdoing, or otherwise of  
3 the Parties. Defendants have denied and continue to deny the claims asserted by Plaintiff. Nothing  
4 contained herein shall be construed to prevent the Parties from offering the Agreement into  
5 evidence for the purposes of enforcement of the Agreement.

6 13. The certification of the Settlement Class shall be binding only with respect to the  
7 settlement of the Action. In the event that the Agreement is terminated pursuant to its terms or is  
8 not approved in all material respects by the Court, or such approval is reversed, vacated, or  
9 modified in any material respect by this or any other court, the certification of the Settlement Class  
10 shall be deemed vacated, the Action shall proceed as if the Settlement Class had never been  
11 certified (including Defendants' right to oppose any subsequent motion for class certification), and  
12 no reference to the Settlement Class, the Agreement, or any documents, communications, or  
13 negotiations related in any way thereto shall be made for any purpose.

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15 **IT IS SO ORDERED** this \_\_\_\_ day of \_\_\_\_\_, 2013.

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18 HONORABLE CHARLES R. BREYER  
19 UNITED STATES DISTRICT JUDGE  
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# Exhibit D

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JAMES GROSS, individually and on behalf  
of all others similarly situated,

*Plaintiff,*

v.

SYMANTEC CORPORATION, a Delaware  
corporation, and PC TOOLS, LTD., an Irish  
limited liability company,

*Defendants.*

Case No. 3:12-cv-00154-CRB

**[PROPOSED] FINAL JUDGMENT AND  
ORDER OF DISMISSAL WITH PREJUDICE**

Judge: Honorable Charles R. Breyer  
Action Filed: January 10, 2012

1 The Court, having considered Plaintiff's Motion for Final Approval (the "Motion for Final  
2 Approval") of a proposed class action settlement of the above-captioned action (the "Action")  
3 between Plaintiff James Gross and Defendants Symantec Corp. and PC Tools, Ltd. (collectively,  
4 "Defendants"), pursuant to the Parties' Stipulation of Class Action Settlement and the Addendum  
5 to Stipulation of Class Action Settlement (the "Agreement"), and having duly considered the  
6 papers and arguments of counsel, Plaintiff's Motion is hereby GRANTED and it is hereby  
7 ORDERED, ADJUDGED, and DECREED THAT:

8 1. Unless defined herein, all capitalized terms in this Order shall have the respective  
9 meanings ascribed to them in the Agreement.

10 2. This Court has jurisdiction over the subject matter of the Action and over all Parties  
11 to the Action, including all Settlement Class Members.

12 3. On [date], this Court preliminarily approved the Settlement and certified, for  
13 settlement purposes, the Settlement Class consisting of:

14 All individuals and entities residing in the United States and its territories that, prior  
15 to [date of preliminary approval], purchased from an authorized seller a license to  
16 use any of the following software in the United States and its territories: PC Tools  
Registry Mechanic and PC Tools Performance Toolkit released since June 1, 2007,  
and Norton Utilities 14.0 through 16.0.

17 4. The persons listed on Addendum A hereto are found to have validly excluded  
18 themselves from the Settlement Class in accordance with the provisions of the Preliminary  
19 Approval Order.

20 5. This Court now affirms certification of the Settlement Class and gives final  
21 approval to the settlement and finds that the Settlement Agreement is fair, reasonable, adequate,  
22 and in the best interests of the Settlement Class. The complex legal and factual posture of this case,  
23 and the fact that the Settlement Agreement is the result of arms' length negotiations presided over  
24 by a neutral mediator support this finding. The Settlement consideration provided under the  
25 Agreement constitutes fair value given in exchange for the release of the Released Claims against  
26 the Released Parties. The Court finds that the consideration to be paid to members of the  
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1 Settlement Class is reasonable, considering the facts and circumstances of the claims and defenses  
2 asserted in the Action, and the potential risks and likelihood of success of alternatively pursuing  
3 trial on the merits.

4 6. The Class Representative and Class Counsel adequately represented the Settlement  
5 Class for purposes of entering into and implementing the Settlement Agreement. The preliminary  
6 appointment of Jay Edelson, Rafey S. Balabanian, Benjamin H. Richman and Chandler R. Givens  
7 as Class Counsel is hereby confirmed.

8 7. Accordingly, the Settlement Agreement is hereby finally approved in all respects,  
9 and the Parties are hereby directed to perform its terms. Defendants are hereby ordered to  
10 implement and comply with the Settlement Agreement regarding the injunctive relief made  
11 available to the Settlement Class Members. Defendants shall pay the Fee Award and Incentive  
12 Award, as set forth in the accompanying Order Approving Fees and Incentive Award, [and  
13 Designating *Cy Pres* Distribution], pursuant to and in the manner provided by the terms of the  
14 Settlement Agreement.

15 8. Other than as set forth in the accompanying Order Approving Fees and Incentive  
16 Award, [and Designating *Cy Pres* Distribution] the Parties shall bear their own costs and attorneys'  
17 fees.

18 9. Notice to the Settlement Class has been provided in accordance with the Court's  
19 Preliminary Approval Order, and the substance of and dissemination program for the notice, which  
20 included direct e-mail notice and the creation of a Settlement Website, fully complied with the  
21 requirements of Federal Rule of Civil Procedure 23 and due process, and constituted the best  
22 notice practicable under the circumstances.

23 10. The Court finds that the Defendants properly and timely notified the appropriate  
24 state and federal officials of the Settlement Agreement, pursuant to the Class Action Fairness Act  
25 of 2005 ("CAFA"), 28 U.S.C. § 1715. The Court has reviewed the substance of Defendants' notice  
26 and accompanying materials, and finds that they complied with all applicable requirements of  
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1 CAFA.

2 11. Subject to the terms and conditions of the Settlement Agreement, this Court hereby  
3 dismisses the Action on the merits and with prejudice.

4 12. This judgment has been entered without any admission by Defendants of liability or  
5 as to the merits of any of the allegations in Plaintiff's Second Amended Complaint.

6 13. The Parties and Settlement Class Members are bound by the terms and conditions  
7 of the Agreement. Upon the Effective Date of this Settlement, Plaintiffs and each and every  
8 Settlement Class Member shall be deemed to have released, acquitted and forever discharged  
9 Defendants and each of the Released Parties from any and all Released Claims.

10 14. Upon the Effective Date, the above release of claims and the Settlement Agreement  
11 will be binding on, and have res judicata and preclusive effect in all pending and future lawsuits or  
12 other proceedings maintained by or on behalf of Plaintiff and all other Settlement Class Members,  
13 Releasing Parties, and their heirs, executors, and administrators, successors, and assigns. All  
14 Settlement Class Members who have not been properly excluded from the Settlement Class shall  
15 be permanently barred and enjoined from initiating, asserting and/or prosecuting any Released  
16 Claim(s) against any of the Released Parties in any court, arbitration, tribunal, forum or  
17 proceeding.

18 15. Without affecting the finality of this judgment, the Court retains exclusive  
19 jurisdiction of the Settlement, including without limitation, issues concerning its administration  
20 and consummation. The Court also retains exclusive jurisdiction over the Parties to the Agreement,  
21 including Defendants and all Settlement Class Members regarding the Agreement and this Final  
22 Judgment Order. Defendants, Plaintiff, and Settlement Class Members are hereby deemed to have  
23 submitted irrevocably to the exclusive jurisdiction of this Court for any suit, action, proceeding, or  
24 dispute arising out of or relating to the Released Claims, this Order, and the Agreement, including,  
25 but not limited to, the applicability of the Released Claims, the Agreement, or this Order. Without  
26 limiting the generality of the foregoing, any dispute concerning the Agreement, including, but not  
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1 limited to, any suit, action, arbitration, or other proceeding by a Settlement Class Member in which  
2 the provisions of the Agreement are asserted as a defense in whole or in part to any claim or cause  
3 of action or otherwise raised as an objection, shall constitute a suit, action, or proceeding arising  
4 out of or relating to this Order. Solely for purposes of such suit, action, or proceeding, to the fullest  
5 extent possible under applicable law, the Parties hereto and all Settlement Class Members are  
6 hereby deemed to have irrevocably waived and agreed not to assert, by way of motion, as a  
7 defense or otherwise, any claim or objection that they are not subject to the jurisdiction of this  
8 Court, or that this Court is, in any way, an improper venue or an inconvenient forum.

9       16. The Agreement and the proceedings and statements made pursuant to the  
10 Agreement or papers filed relating to the Agreement, and this Order, are not and shall not in any  
11 event be construed as, offered in evidence as, received in evidence as, and/or deemed to be  
12 evidence of a presumption, concession, or an admission of any kind by any of the Parties of (i) the  
13 truth of any fact alleged or the validity of any claim or defense that has been, could have been, or  
14 in the future might be asserted in the Action, any other litigation, court of law or equity,  
15 proceeding, arbitration, tribunal, investigation, government action, administrative proceeding, or  
16 other forum, or (ii) any liability, responsibility, fault, wrongdoing, or otherwise of the Parties.  
17 Defendants have denied and continue to deny the claims asserted by Plaintiff. Nothing contained  
18 herein shall be construed to prevent a Party from offering the Agreement into evidence for the  
19 purposes of enforcement of the Agreement.

20       17. The certification of the Settlement Class shall be binding only with respect to the  
21 settlement of the Action. In the event that the Agreement is terminated pursuant to its terms or the  
22 Court's approval of the Settlement is reversed, vacated, or modified in any material respect by this  
23 or any other court, the certification of the Settlement Class shall be deemed vacated, the Action  
24 shall proceed as if the Settlement Class had never been certified (including Defendants' right to  
25 oppose any subsequent motion for class certification), and no reference to the Settlement Class, the  
26 Agreement, or any documents, communications, or negotiations related in any way thereto shall be  
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1 made for any purpose.

2 18. Based upon the Court's finding that there is no just reason for delay of enforcement  
3 or appeal of this Order notwithstanding the Court's retention of jurisdiction to oversee  
4 implementation and enforcement of the Agreement, the Court directs the Clerk to enter final  
5 judgment.

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7 **IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

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10 HONORABLE CHARLES R. BREYER  
11 UNITED STATES DISTRICT JUDGE  
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# **Exhibit E**

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JAMES GROSS, individually and on behalf  
of all others similarly situated,

*Plaintiff,*

v.

SYMANTEC CORPORATION, a Delaware  
corporation, and PC TOOLS, LTD., an Irish  
limited liability company,

*Defendants.*

Case No. 3:12-cv-00154-CRB

**[PROPOSED] ORDER AWARDING  
ATTORNEYS' FEES AND INCENTIVE  
AWARD, AND DESIGNATING *CY PRES*  
DISTRIBUTION**

Judge: Honorable Charles R. Breyer  
Action Filed: January 10, 2012

1 The Court, having considered Plaintiff's Motion for an Award of Attorneys' Fees and  
 2 Incentive Award (the "Motion"), the lack of opposition from Defendants Symantec Corporation  
 3 ("Symantec") and PC Tools, Ltd. ("PC Tools") (Plaintiff and the Defendants are collectively  
 4 referred to as the "Parties"), any and all objections thereto, and all other relevant factors, hereby  
 5 makes the following findings of fact and conclusions of law:

### 6 **FINDINGS OF FACT**

7 Pursuant to Rules 23(h)(3) and 52(a) of the Federal Rules of Civil Procedure, the Court  
 8 makes the following findings of fact:

9 1. On [date], 2013, the Parties entered into a Stipulation of Class Action Settlement  
 10 and on [date], entered in to an Addendum to Stipulation of Class Action Settlement (collectively,  
 11 the "Agreement").

12 2. Unless otherwise defined herein, all capitalized terms in this Order shall have the  
 13 respective meanings ascribed to them in the Parties' Agreement.

14 3. On [date], 2013, the Court entered an Order preliminarily approving the Parties'  
 15 settlement ("Preliminary Approval Order"), directing that Notice be provided to the Settlement  
 16 Class, scheduling a Fairness Hearing to determine whether to finally approve the settlement, to  
 17 finally certify the Settlement Class, to award attorneys' fees, expenses and/or an incentive award,  
 18 [to designate any un-awarded portion of the agreed upon Fee Award for *cy pres* distribution], and  
 19 to consider any objections properly and timely presented. (Dkt. xx.)

20 4. In the Court's Preliminary Approval Order, the Court appointed Plaintiff's counsel,  
 21 Jay Edelson, Rafey S. Balabanian, Benjamin H. Richman and Chandler R. Givens, all of Edelson  
 22 LLC, to serve as Class Counsel on behalf of the Settlement Class. (*Id.*)

23 5. Notice has been provided to the Settlement Class in accordance with the  
 24 Preliminary Approval Order, disclosing the maximum amount that Class Counsel would seek in a  
 25 Fee Award and an incentive award to Plaintiff as Class Representative, and the fact that the Court  
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1 may determine to designate any un-awarded amount of the maximum Fee Award for *cy pres*  
2 distribution.

3 6. Pursuant to the Preliminary Approval Order, and as set forth in the Notice, any  
4 objections to Class Counsel's petition for a Fee Award and incentive award were to be filed and  
5 served by [date], 2013.

6 7. The Court held a Fairness Hearing on [date], 2013, at which all interested persons  
7 were given the opportunity to be heard. The Court heard and considered all submissions in  
8 connection with Class Counsel's request for a Fee Award and incentive award, and the proposed  
9 Settlement, including the arguments of counsel and any timely filed valid objections.

10 8. There, the Court found that the settlement was negotiated at arms-length, with the  
11 assistance of a well-respected third-party mediator, by experienced counsel who did not put their  
12 interests ahead of the Settlement Class, as evidenced by the fact that all Settlement Benefits to the  
13 Settlement Class were agreed upon prior to the Parties' negotiations regarding a Fee Award to  
14 Class Counsel and an incentive award to Plaintiff as Class Representative. Thus, the Court finds  
15 that the Agreement was reached in good faith, is in the best interests of the Settlement Class, and is  
16 free of any collusion or other improper motive.

17 9. Accordingly, the Court entered a Final Judgment Order on [date], 2013, fully and  
18 finally approving the Parties' Settlement as fair, reasonable and adequate, finally certifying the  
19 Settlement Class, and forever releasing the Released Parties as to the Released Claims.

20 10. Class Counsel has expended substantial time and effort in their prosecution of the  
21 claims at issue in this Action on behalf of Plaintiff and the Settlement Class.

22 11. Plaintiff is entitled to reasonable attorneys' fees in the amount of [xx]% of the  
23 \$11,000,000 Settlement Fund, or \$[amount], which amount includes Plaintiff's reasonable  
24 expenses incurred by Class Counsel in the Action. This Fee Award is reasonable under both the  
25 "common fund" percentage of recovery analysis and under the lodestar cross-check method, given  
26 that: (a) the fee represents [xx]% of the Settlement Fund, which is below the 25% benchmark  
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1 “common fund” award in the Ninth Circuit; (b) the number of hours that Class Counsel devoted to  
 2 the Action is reasonable; (c) Class Counsel’s hourly rates are reasonable and have previously been  
 3 approved by other courts throughout the country; and (d) Class Counsel expended considerable  
 4 time and labor in this Action, the risks that they would recover nothing, the novelty and  
 5 complexity of the claims at issue, Class Counsel’s skill and experience, and the results obtained  
 6 through the Settlement.

7 12. [Pursuant to Section XI.C of the Settlement, the Court hereby exercises its  
 8 discretion to designate the following organization(s) to receive a *cy pres* distribution from the  
 9 Settlement Fund in the amount(s) indicated, the total of which *cy pres* distribution does not exceed  
 10 the difference between the \$1,650,000 maximum Fee Award agreed upon by the Parties and the  
 11 Fee Award approved by this Court (i.e., \$[amount]):

12 [Organization, Amount];

13 13. [The organization(s) identified above are proper recipients of the *cy pres*  
 14 component of the Settlement Fund because the work they do directly relates to the primary issues  
 15 in this litigation and the interests of the Settlement Class, including increasing awareness and  
 16 protections for Internet users and consumers related to computers, computer software and/or  
 17 related purchases (online and otherwise).]

18 14. [Further,] Plaintiff initiated the Action, acted to protect the interests of the  
 19 Settlement Class, and assisted Class Counsel, which efforts have resulted in an Agreement entered  
 20 into in good faith that provides a fair, reasonable, adequate and certain result for the Settlement  
 21 Class.

22 15. Thus, Plaintiff as Class Representative, is entitled to an incentive award for his time  
 23 and efforts in these proceedings in the amount of \$[amount].

#### 24 **CONCLUSIONS OF LAW**

25 Pursuant to Rules 23(h)(3) and 52(a) of the Federal Rules of Civil Procedure, the Court  
 26 makes the following conclusions of law:  
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1           16. Rule 23 of the Federal Rules of Civil Procedure provides that, “[i]n a certified class  
2 action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by  
3 law or by the parties’ agreement.” Fed. R. Civ. P. 23(h).

4           17. In awarding attorneys’ fees and costs under Rule 23(h), the Court may hold a  
5 hearing and must make findings of fact and state its legal conclusions. *See* Fed. R. Civ. P. 23(h)(3).

6           18. In “common fund” cases, such as this, the Court has the discretion to award a  
7 plaintiff’s attorneys’ fees as either a percentage of the common fund, or by using the lodestar  
8 method. *See In re Bluetooth*, 654 F.3d 935, 942 (9th Cir. 2011) (citing *In re Mercury Interactive*  
9 *Corp.*, 618 F.3d at 992); *see also In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1378-79 (N.D.  
10 Cal. 1989)

11           19. In the Ninth Circuit, the “benchmark” award in common fund cases is 25% of the  
12 recovery obtained. *See Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002).

13           20. The Court may also apply the lodestar method to determine a reasonable attorneys’  
14 fee award by multiplying the number of hours reasonably expended by a reasonable hourly rate.  
15 *See Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983). The fee amount calculated under the lodestar  
16 method is presumptively reasonable. *Id.* In common fund cases, the lodestar method may also be  
17 used as a cross-check of the percentage of recovery method. *See In re Bluetooth*, 654 F.3d at 942.  
18 Counsel’s total lodestar amount may include work performed by litigation support staff as well.  
19 *See Mogck v. Unum Life Ins. Co. of Am.*, 289 F. Supp. 2d 1181, 1190-91, 1194 (S.D. Cal. 2003)  
20 (granting attorneys’ fees under lodestar/multiplier approach for attorney, paralegal and secretarial  
21 staff hours) (citing *D’Emanuele v. Montgomery Ward & Co.*, 904 F.2d 1379, 1387 (9th Cir.  
22 1990)).

23           21. In deciding an appropriate attorneys’ fee award under the lodestar method, courts  
24 should consider a number of factors, including *inter alia*, the time and labor required of counsel,  
25 the novelty and complexity of the litigation, the skill and experience of counsel, the contingent  
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1 nature of the case, and the results obtained. *See Blum v. Stenson*, 465 U.S. 866, 898-900 (1984);  
 2 *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70 (9th Cir. 1975).

3 22. Additionally, a *cy pres* distribution is appropriate where it will “account for the  
 4 nature of the plaintiffs’ lawsuit, the objectives of the underlying statutes, and the interests of the  
 5 silent class members.” *Nachshin v. AOL, LLC*, 663 F.3d 1034, 1036 (9th Cir. 2011).

6 23. Further, incentive awards are also typical in class action cases. *Rodriguez v. West*  
 7 *Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). Although the amounts of incentive awards  
 8 granted by courts vary, it is not uncommon for a court to award a class representative several  
 9 thousand dollars. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 457, 463 (9th Cir.  
 10 2000) (approving incentive award of \$5,000); *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241,  
 11 253 (D.N.J. 2009) (approving incentive award of \$10,000).

### 12 ORDER

13 Now, therefore, good cause appearing, it is HEREBY ORDERED, ADJUDGED, AND  
 14 DECREED:

15 24. This Court has jurisdiction over the subject matter of Plaintiff’s application for a  
 16 Fee Award and incentive award, and all matters relating thereto.

17 25. Due and adequate notice of the maximum Fee Award and incentive award that  
 18 Class Counsel would request was directed to all persons who were reasonably identifiable  
 19 Settlement Class Members, advising them of their right to object thereto or request exclusion from  
 20 the settlement.

21 26. The Court hereby awards Class Counsel a Fee Award in the amount of \$[amount].  
 22 For the reasons stated above, the Court finds that this amount is fair and reasonable under either  
 23 the percentage of recovery method or lodestar method.

24 27. [The Court hereby orders that the following organization(s) shall receive a *cy pres*  
 25 distribution from the Settlement Fund in the amount(s) indicated:

26 [Organization, Amount];  
 27  
 28

**IT IS SO ORDERED** this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

[PROPOSED] ORDER AWARDING ATTORNEYS' FEES AND INCENTIVE AWARD, AND DESIGNATING *CYPRES* 7